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## The Report of the Osgoode Hall Study on Compensation for Victims of Automobile Accidents

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Osgoode Hall Law School  
Toronto. Study on Compensation  
for Victims of Automobile Accidents.

THE REPORT  
OF THE  
OSGOODE HALL STUDY  
ON  
COMPENSATION FOR VICTIMS  
OF AUTOMOBILE ACCIDENTS

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<u>TABLE OF CONTENTS</u>	
	<u>Page</u>
<u>CHAPTER I - INTRODUCTION</u>	
A. <u>An Age of Automobiles and Automobile Accidents</u>	1
B. <u>The Background of the Osgoode Hall Study on Compensation for Victims of Automobile Accidents</u>	3
C. <u>The Purpose and Scope of the Study</u>	7
1. Purpose	7
2. Scope	8
D. <u>Methodology</u>	10
1. Sampling Procedure	10
2. Collection of the Data	10
3. Processing the Data	12
E. <u>The Plan of the Report</u>	13
<u>FOOTNOTES</u>	
<u>APPENDIX 1</u>	
<u>APPENDIX 2</u>	
<u>CHAPTER II - TOTAL OF ECONOMIC LOSSES AND TOTAL RECOVERIES</u>	
A. <u>Estimated Total Losses in the Universe</u>	1
B. <u>Estimated Total Tort Recovery in the Universe</u>	1
C. <u>Estimated Total Non-Tort Recovery in the Universe</u>	2
D. <u>Estimated Combined Total of Tort Recovery plus Non-Tort Recovery in the Universe</u>	2
E. <u>Comparison of Percentages of Total Recoveries to Economic Losses According to Type of Injuries</u>	3
<u>FOOTNOTES</u>	
<u>TABLE 1 - TOTAL LOSSES AND RECOVERIES</u>	
<u>CHAPTER III - THE ECONOMIC LOSSES</u>	
A. <u>Method of Calculating Losses</u>	1

	<u>Page</u>
1. General	1
2. Economic Losses	3
(a) Present Economic Losses	3
(b) Future Economic Losses	5
B. <u>Estimated Total of Economic Losses for Various Types of Expenses</u>	9
C. <u>The Economic Losses Analysed</u>	11
1. Economic Losses in the Minor Cases	11
(a) Hospital Expenses in Minor Cases	11
(b) Medical Expenses in Minor Cases	12
(c) Collision Losses in Minor Cases	12
(d) Income Losses in Minor Cases	12
2. Economic Losses in the Serious Cases	13
(a) The Hospital Losses in Serious Cases	15
(b) The Medical Losses in Serious Cases	15
(c) Collision Losses in Serious Cases	15
(d) Present Income Losses in Serious Cases	16
(e) Future Loss in Serious Cases	16
3. Economic Losses in the Fatal Cases	19
(a) Hospital Losses in Fatal Cases	19
(b) Medical Losses in the Fatal Cases	20
(c) Collision Losses in Fatal Cases	20
(d) Funeral and Burial Expenses in Fatal Cases	20
(e) Present Income Loss in the Fatal Cases	21
(f) Future Loss in Fatal Cases	21

FOOTNOTES

TABLE 1 - TOTAL ECONOMIC LOSSES FOR VARIOUS TYPES OF EXPENSE

TABLE 2 - ECONOMIC LOSSES IN THE MINOR CASES

	<u>Page</u>
<u>TABLE 3</u> - ECONOMIC LOSSES IN THE SERIOUS CASES	
<u>TABLE 4</u> - ECONOMIC LOSSES IN THE FATAL CASES	
<u>CHAPTER IV - TORT RECOVERY</u>	
A. <u>Economic Recovery</u>	1
B. <u>The Tort System of Ontario</u>	2
1. General Theory of Tort Liability for Automobile Accidents	2
2. Legislation	3
(a) Rules of the Road	3
(b) Statutory Liability of Owner	3
(c) Statutory Onus Shift	4
(d) No Liability to Gratuitous Passengers	5
(e) Contributory Negligence	7
3. The Forum for Fault Determination	9
4. The Role of Liability Insurance	10
5. The Motor Vehicle Accident Claims Fund	11
C. <u>Incidence of Tort Recovery</u>	13
1. Number of Individuals Receiving Some Tort Recovery	13
2. Comparisons	14
(a) Residence of Injured Person	14
(b) Amount of Loss	15
(c) Category of Victim	15
D. <u>The Amount of Tort Recovery</u>	18
1. Average Tort Recovery	18
(a) According to Type of Injury	18
(b) According to the Income of Chief Supporter	18
(c) According to the Source of Recovery	19
2. Individuals with Various Amounts of Tort Recovery	20



3. Tort Recovery Amounts Compared to Amounts of Economic Losses	21
E. <u>Tort Recovery Ratios</u>	24
1. According to Type of Injury	25
2. According to Income of Chief Supporter	26
3. According to Presence of Lawyers	27
F. <u>General Damages</u>	29
<u>FOOTNOTES</u>	
TABLE 1 - INDIVIDUALS RECEIVING SOME TORT RECOVERY	
TABLE 2 - INCIDENCE OF TORT RECOVERY ACCORDING TO CATEGORY OF VICTIM	
TABLE 3 - COMPARISON OF AVERAGE TORT RECOVERY ACCORDING TO THE INCOME OF CHIEF SUPPORTER	
TABLE 4 - INDIVIDUALS WITH VARIOUS AMOUNTS OF TORT RECOVERY	
TABLE 5 - TORT RECOVERY AMOUNTS COMPARED TO AMOUNT OF ECONOMIC LOSS	
TABLE 6 - TORT RECOVERY RATIOS IN CASES WHERE SOME ECONOMIC LOSSES INCURRED	
TABLE 7 - COMPARISON OF TORT RECOVERY RATIO ACCORDING TO INCOME OF CHIEF SUPPORTER	
TABLE 8 - TORT RECOVERY RATIOS BASED ON LEGAL LOSSES IN THE SERIOUS CASES	
<u>CHAPTER V - THE ROAD TO A TORT RECOVERY</u>	
A. <u>Litigation Procedure</u>	1
B. <u>Length of Time Taken to Receive Tort Recovery</u>	3
1. Time Taken According to Type of Injury	3
2. Time Taken According to Amount of Economic Loss	5
3. Time Taken According to Source of Recovery	8
C. <u>Claims Made</u>	9
1. Claims According to Type of Injury	9
2. Claims Made According to Residence of Injured Person	10

3. Claims Made According to Amount of Economic Loss	10
4. Claims Made According to Category of Victim	12
5. Claims Made According to Income of Chief Supporter	12
D. <u>Lawyer Involvement</u>	14
1. Consultation	14
2. Retainer	14
3. Lawyer Consultation where no Claim Made	14
4. Litigation Costs	15
E. <u>The Role of the Courts</u>	16
1. Writs Issued	16
2. Statements of Claim Filed	17
3. Statements of Defence Filed	17
4. Cases Set Down for Trial	18
5. Examinations for Discovery	18
6. Trials Commenced	19
7. Trials Completed	20
8. Cases Still Pending	21
9. Summary	22
<u>FOOTNOTES</u>	
TABLE 1 - LENGTH OF TIME TAKEN TO RECEIVE TORT RECOVERY	
TABLE 2 - LENGTH OF TIME TAKEN TO RECEIVE TORT RECOVERY ACCORDING TO AMOUNT OF ECONOMIC LOSS	
TABLE 3 - PEOPLE WHO MADE CLAIMS BY TYPE OF INJURY	
TABLE 4 - THE ROAD TO A TORT RECOVERY	
<u>CHAPTER VI - NON-TORT RECOVERY</u>	
A. <u>The Social Welfare System of Ontario</u>	1
1. General	1
2. The Ontario Hospital Services Commission	1

	<u>Page</u>
3. Workmen's Compensation	2
4. Disability Pensions	4
5. General Welfare Assistance	5
6. Medical Care	6
7. Other Programmes	7
B. <u>Estimated Total of Non-Tort Recovery in the Universe for Various Types of Recovery</u>	9
C. <u>The Non-Tort Recoveries Analyzed</u>	10
1. Non-Tort Recoveries in the Minor Cases Studied	10
(a) Hospital Recovery	10
(b) Medical Recovery	11
(c) Collision Recovery	11
(d) Income Recovery	11
2. Non-Tort Recoveries in the Serious Cases Studied	12
(a) Hospital Recovery	12
(b) Medical Recovery	13
(c) Collision Recovery	13
(d) Income Recovery	13
3. Non-Tort Recoveries in the Fatal Cases Studied	14
(a) Specific Items of Recovery	14
D. <u>Non-Tort Recovery Ratios</u>	16
1. Total Non-Tort Recovery compared to Total Losses	16
2. Non-Tort Recovery Ratios for Specific Items of Loss	18
(a) Hospital Costs	18
(b) Medical Costs	19
(c) Collision Losses	20
(d) Income Losses	
(e) Funeral Expenses	21

FOOTNOTES

	<u>Page</u>
<u>TABLE 1</u> - ESTIMATED TOTAL OF NON-TORT RECOVERY IN UNIVERSE FOR VARIOUS TYPES OF RECOVERY	
<u>TABLE 2</u> - NON-TORT RECOVERY IN THE MINOR CASES	
<u>TABLE 3</u> - NON-TORT RECOVERY IN THE SERIOUS CASES	
<u>TABLE 4</u> - NON-TORT RECOVERY IN THE FATAL CASES	
<u>TABLE 5</u> - NON-TORT RECOVERY RATIOS: TOTAL LOSSES COMPARED TO TOTAL NON-TORT RECOVERY	
<u>TABLE 6</u> - NON-TORT RECOVERY RATIOS FOR SPECIFIC ITEMS OF LOSS	
 <u>CHAPTER VII - COMBINED RECOVERY FROM BOTH SOURCES</u>	
A. <u>General</u>	
B. <u>Combined Tort Recovery plus Non-Tort Recovery Ratios</u>	1
C. <u>Net Out-of-Pocket Losses</u>	4
 <u>FOOTNOTES</u>	
<u>TABLE 1</u> - COMBINED TORT RECOVERY PLUS NON-TORT RECOVERY RATIOS	
<u>TABLE 2</u> - NET OUT-OF-POCKET LOSSES	
 <u>CHAPTER VIII - ATTITUDES</u>	
A. <u>General</u>	1
B. <u>Attitudes Toward Fault System</u>	1
1. Reasons Given	2
2. Comparison	3
(a) Residence	3
(b) Attitude Toward Fault System According to Amount of Loss	4
C. <u>Attitudes Toward Method of Trial</u>	6
1. Reasons Given	7
2. Comparison of Attitudes Towards Method of Trial	7
(a) Residence	7

(b) Attitude Toward Method of Trial According to Amount of Economic Loss	8
3. Attitude Toward Actual Trial Itself	9
D. <u>Attitude Toward Proposed Ontario Plan</u>	10
1. Reasons Given	10
2. Comparison of Attitudes Toward Proposed Ontario Plan	11
(a) Residence	11
(b) Attitude Toward Proposed Ontario Plan According to Amount of Economic Loss	12
E. <u>Attitude Toward Compensation for Pain and Suffering</u>	13
1. Reasons Given	13
2. Comparison of Attitude Toward Pain and Suffering	14
(a) Residence	
(b) Attitudes toward Compensation for Pain and Suffering According to Amount of Economic Loss	15
F. <u>Attitudes Toward Amount of Tort Recovery</u>	16
G. <u>Attitudes Towards Length of Time Taken to Dispose of Tort Claims</u>	17
H. <u>Attitude Toward Medical Treatment Compared with Attitude Toward Treatment by Lawyers</u>	18
1. Reasons Given	19
2. Comparison of Attitudes by Residence	19
I. <u>Attitude Toward Cost of Legal Services</u>	21
J. <u>Suggested Improvements to the Present System</u>	21

FOOTNOTES

<u>TABLE 1</u> - ATTITUDES TOWARD FAULT SYSTEM	
<u>TABLE 2</u> - ATTITUDE TOWARD FAULT SYSTEM	
<u>TABLE 3</u> - ATTITUDES TOWARD METHOD OF TRIAL	
<u>TABLE 4</u> - ATTITUDE TOWARD METHOD OF TRIAL ACCORDING TO AMOUNT OF ECONOMIC LOSS	

<u>TABLE 5</u> - ATTITUDES TOWARD PROPOSED ONTARIO PLAN	<u>Page</u>
<u>TABLE 6</u> - ATTITUDE TOWARD PROPOSED ONTARIO PLAN (ACCORDING TO AMOUNT OF ECONOMIC LOSS)	
<u>TABLE 7</u> - ATTITUDES TOWARD COMPENSATION FOR PAIN AND SUFFERING	
<u>TABLE 8</u> - ATTITUDE TOWARD COMPENSATION FOR PAIN AND SUFFERING ACCORDING TO AMOUNT OF ECONOMIC LOSS	
<u>TABLE 9</u> - ATTITUDE TOWARD AMOUNT OF TORT RECOVERY RECEIVED ACCORDING TO AMOUNT OF ECONOMIC LOSS	
<u>TABLE 10</u> - ATTITUDE TOWARD TIME TAKEN TO DISPOSE OF CLAIM ACCORDING TO AMOUNT OF ECONOMIC LOSS	
<u>TABLE 11</u> - ATTITUDES TOWARD MEDICAL TREATMENT COMPARED WITH ATTITUDES TOWARD TREATMENT BY LAWYERS	
 <u>CHAPTER IX - CONCLUSIONS</u>	
A. <u>Economic Losses</u>	2
B. <u>Tort Recovery</u>	3
C. <u>Delay</u>	5
D. <u>The Role of Courts and Lawyers</u>	6
E. <u>Non-Tort Recovery</u>	8
F. <u>Combined Recovery</u>	10
G. <u>Attitudes</u>	11
H. <u>Summary of Findings</u>	13

## CHAPTER I - INTRODUCTION

### 1. AN AGE OF AUTOMOBILES AND AUTOMOBILE ACCIDENTS

Our subjugation to the luxury and convenience of the modern automobile has worked far-reaching changes in our way of life. Social customs, the location and shape of cities, the design of homes, office buildings, shopping areas and recreation centres - indeed, the very vitality of the Canadian economy are influenced largely by the omnipresent automobile (1). Unfortunately, this development also generates thousands of automobile accidents each year which exact a staggering toll in human life and suffering. Confronted by the phenomenon of burgeoning automobile ownership, governments at all levels have established programmes of highway improvement, traffic control, driver testing and education, but the accident figures continue to mount (2).

The six million automobiles registered in Canada travel over fifty million miles each year (3). In Ontario, the most populous province, there are over two million automobiles - approximately one vehicle for each licensed driver and one automobile for every three residents (4). The total number of automobiles and miles driven increases annually (5) yielding a corresponding growth in the accident figures (6).

Over a quarter of a million accidents are produced each year on Canadian highways in which four thousand people are killed and one hundred thousand injured (7). In 1963 there were 104,919 accidents reported in Ontario as a result of which 1,421 people died and 47,081 were injured (8).

The need to provide the victims and their families with medical, hospital and rehabilitation services and subsistence income has led to the establishment of certain reparation machinery. Thousands of Canadians in

government, insurance and law offices across the land are engaged in assessing these costs and in providing reimbursement to the injured persons. A good number of these costs are easily calculated, some are more difficult to assess, but the cost to society is probably immeasurable. This study is primarily concerned with the financial costs incurred by the victims of automobile accidents and the various methods whereby they secure compensation for these expenses.

B. THE BACKGROUND OF THE OSGOOD HALL STUDY ON COMPENSATION FOR VICTIMS OF AUTOMOBILE ACCIDENTS

An injured individual may not personally have to bear the entire financial brunt of an automobile accident since the machinery of the tort system is available to shift the costs incurred to the other party involved in the accident. Anyone injured in an automobile accident, or the close relatives of anyone killed, may make a tort claim against the other party involved in the accident and thereby may recover some or all of his losses (9). The insured person may also be covered by hospital, medical, disability or other insurance which will assist him in meeting these expenses. Moreover, certain government welfare programmes such as workmen's compensation, disability pensions and general welfare assistance, may ease the financial strain on those who are injured (10).

There has been some outcry recently against the present system of compensation for victims of automobile accidents (11). Criticism has been levelled against the system for its unfairness, since it is said that it over-compensates some people while it under-compensates others (12). The problem of delay (13), the high cost of administration and the increasing insurance premiums are constantly under attack. Critics of the tort system have censured the difficulty of proving fault, the defects in the jury system (14), the plight of the gratuitous passengers (15), and other aspects of the system.

On the other hand, the defenders of the present system have been equally vociferous (16). They argue that tort law is just in that it forces only the negligent drivers to compensate those injured by them. If it were otherwise, they say, tort law would not act as an effective deterrent to reduce the frequency of accidents. They point out that the problem of delay can be minimized by the addition of more judges, courtrooms and skilled negligence

lawyers. It is also contended that the jury system helps to protect freedom that the resolution of these disputes should not be entrusted to government bureaucrats. The man who falls in the bathtub or the woman who suffers from cancer is as deserving of compensation as is the motor accident victim, the advocates of the present system declare, and since the real problem is one of poverty and social welfare, society in general should bear the cost burden rather than the motorist (17).

Partly because this debate has generated a great deal of heat without very much light, the Legislative Assembly of Ontario adopted a resolution on April 5, 1960 for the appointment of a Select Committee of the House:

to examine, investigate, enquiry into, study and report on all matters relating to persons who suffer financial loss or injury as a result of motor vehicle accidents . . . and to make such recommendations as are deemed advisable . . .

Two interim reports were tabled and their recommendations were quickly implemented, (18) and in March 1963, the Final Report of the Select Committee on Automobile Insurance was tabled in the Legislative Assembly. It came to the following conclusions:

The Committee is, of course, concerned that some forms of remedy should be available to all persons injured in automobile accidents. This, after all, must be the ultimate objective of any automobile insurance system.

The Committee sees wisdom in the views of certain eminent persons who believe that the traditional fault-liability system sometimes falls short of providing justice to those involved in or affected by automobile accidents. To put the problem in its simplest terms, society can no longer be entirely satisfied with the idea that fault in every accident rests with an individual or individuals and the financial consequences, whatever they may be, should therefore rest with an individual or individuals. In this automobile age, society as a whole is perhaps responsible for traffic accidents and their consequences to a greater extent

than we have thus far realized or admitted. It may also be, as was suggested in the first interim report, that the task of establishing responsibility amid all the complexities of today is, quite frequently, an almost impossible burden on those who adjudicate cases. It is no longer good enough for us to say that all those who are not entitled to indemnification under the traditional fault-liability system - the surviving dependents of the negligent party, the negligent party himself who may be disabled for life, or the small child who dashes in front of an automobile and is permanently crippled do not deserve a remedy of some kind for damages. The fact of the matter is that they need a remedy (19).

A remedy was recommended by the Select Committee to supplement the present system. In urging a new application of the "accident insurance" principle, the Committee suggested that accident insurance coverage be added as a mandatory part of all standard automobile policies sold by the insurance companies in Ontario. This reform would provide limited benefits for bodily injury or death to any occupant of an automobile and for any pedestrians struck by that automobile, regardless of proof of fault. Set amounts would be paid to the estates of persons killed, and to persons dismembered or who lost the sight of one or both eyes (20). Indemnity to the extent of \$2,000 for reasonable expenses incurred for necessary medical, surgical, dental, ambulance, hospital (21), professional nursing and funeral expenses (22) would be provided. Weekly benefits of \$35 would be paid to an employed person when totally disabled to a limit of 104 weeks, subject to an extension for an additional 104 weeks in a case of total and permanent disability. Only where a motorist is driving while unlicensed, while intoxicated or while in violation of the Criminal Code would be precluded from recovery, but if such driver is killed, his family would not be deprived of compensation. There would be no interference with the injured person's right to sue the person who was at fault for his injury, except that any benefits received under the proposed new plan would be offset against any tort recovery.

The Select Committee on Automobile Insurance relied heavily on submissions made on behalf of the All-Canada Insurance Federation and by a Special Committee of the Law Society of Upper Canada, neither of which made a thorough factual analysis of the operation of the present system. Some accident statistics are collected by the Department of Transport, certain figures are assembled by the insurance industry concerning claims and the cost of their settlement and negligence lawyers believe that their experience equips them with an insight into the statistical patterns of tort compensation, but the fact remains that no complete factual study has been made to determine the financial impact on victims of automobile accident in Ontario (23).

C. THE PURPOSE AND SCOPE OF THE STUDY

1. Purpose

The Osgoode Hall Study was aimed at filling the factual lacuna which prevented an informed assessment of the Ontario system of compensating automobile accident victims (24). Those in charge of the study (25) set out to collect and analyze statistical data which would illuminate the strength and weaknesses of the present system of loss distribution. A survey was designed which would discover the financial costs incurred by injured individuals and whether they were uncompensated, undercompensated or over-compensated for these costs. The project further aimed at describing the interrelation of the tort, private loss insurance and government reparation schemes, the role of lawyers and courts and the attitudes of the injured toward the present system. The desirability of any proposed reform of the Ontario system could then be judged on a solid statistical basis.

This report makes no attempt to determine the causes of automobile accidents. This tantalizing endeavour is left to the engineers, the psychologists, the philosophers and to the lawyers and judges who try automobile accident cases. Neither will this report engage in any debate on the merits or demerits of the tort system, or on the strengths and defects of trial by judge, jury or administrative tribunals. Nor will there be any consideration in this report of the comparative benefits of private or public insurance regimes, the fault system, or any of the other many value issues. In order to maintain complete objectivity the study staff divorced the statistical study being conducted from this sort of emotional discussion. Accordingly, this report will refrain from making any recommendations on a future course of action.

## 2. Scope

In order to utilize most effectively the resources and the time available for the project, the scope of the study was circumscribed in three different ways. First, the accidents which occurred in the calendar year 1961 were chosen for investigation. This choice of a complete year ensured that any seasonal factors would not distort the findings. By studying accidents which had transpired between two and one-half and three and one-half years prior to the survey period of the summer of 1964, virtually all of the litigation would be concluded, the danger of interference with pending litigation would be avoided and the injuries, rehabilitation and personal adjustments would be almost complete. The staff for the study felt that, although some people would not be located and some information would be forgotten after that length of time, a sufficient number of respondents who retained enough information could be interviewed to make the project meaningful.

Second, the study was restricted geographically in that only the accidents which occurred in the County of York were studied. To attempt an investigation of accidents which occurred throughout Ontario would be both costly and time-consuming. By selecting the entire County of York rather than the Municipality of Metropolitan Toronto alone, a sufficient number of rural and other non-Toronto urban residents would be included so as to indicate whether there were any marked differences in treatment, necessitating further study.

Third, the study selected only individuals who suffered personal injuries. Since an owner of an automobile who suffers injury often incurs property damage to his vehicle as well, these facts could all be gathered at the same time without diluting resources. Therefore, some conclusions could be drawn about property losses on the basis of a population consisting of injured parties exclusively.

We have now defined what statisticians call the "population" or "universe" of the study: all the individuals injured or killed in the year 1961 as a result of automobile accidents which occurred in the County of York.



#### D. METHODOLOGY

##### 1. Sampling Procedure

Since all of the people in the population defined above could never be interviewed, the study adopted the sampling procedures devised by statisticians in recent years whereby they are able to estimate with great accuracy certain conclusions about a population by means of a small random sample.

The random sample for the survey (26) was drawn from the file of accident reports collected at the Ontario Department of Transport, Accident Statistics Division (27). This file was both readily available and virtually complete (28).

The study staff wished to focus effort on the serious and fatal injury cases rather than on the less serious ones (29). However, the vast bulk of the injury cases involved only minor bumps, scrapes, bruises, cuts and twists. Consequently, the staff of the study decided to sample in heavier proportions from the group of serious and fatal cases, which procedure is termed the "stratified random sample" technique by statisticians.

In 1961 there were 174 persons fatally injured, 1,283 seriously injured and 10,413 who suffered minor injuries in the County of York (30). Included in the sample were all of the 174 fatal injury cases, 600 of the serious and 400 of the minor, for a total of 1,174 cases (31). Ultimately 590 interviews were completed, consisting of 57 fatal, 307 serious and 226 minor cases (32).

##### 2. Collection of the Data

The data were collected by means of personal interviews with the injured persons themselves or their near relatives (33). Those in charge

of the study believed that honest and accurate answers would be more likely if the interview was conducted in the home of the respondent and in easy reach of private records. Telephone and mailed questionnaires, although less expensive, have several drawbacks, including lower response rates, more incorrect answers, and less personal commitment.

As interviewers the study relied upon law students (34) exclusively since it was felt that only legally trained personnel could understand fully the complex situations that would be encountered. Each of the interviewers underwent rigorous training sessions which included lectures, demonstrations, mock interviews and actual interviews in the field by, and under the supervision of, instructors (35).

The initial contact with the respondents was by letter on Osgoode Hall Law School stationery (36). This letter explained the purpose of the study, informed the respondents that they had been selected for interview, and that they would be telephoned shortly for an appointment and that any information divulged would be kept in strictest confidence (37).

A lengthy and detailed questionnaire was designed, tested in the field and re-designed (38). The form of the questionnaire was that of a working instrument to assist the interviewer in eliciting the desired information. The questionnaire solicited facts about the accident and the injuries resulting, the expenses incurred and sources of recovery, if any, the involvement with law and litigation, and the attitudes of the respondents (39). The duration of the interviews conducted with this questionnaire varied in length from about one-half hour to slightly over one hour.

During the pilot study it was learned that there were gaps in the respondents' knowledge of the facts needed for analysis. Even the most intelligent of respondents were sometimes uncertain of their hospital bills,

their legal costs and the extent to which they were involved in court proceedings. Because of the unreliability of the information concerning these items and because of the high rate of "don't know" responses, it was decided to consult the original records where necessary. The respondents were asked to sign written authorization to doctors, hospitals and lawyers after each interview was completed (40). Where an action had been instituted court records were examined. A high degree of accuracy was thus ensured though this procedure involved a substantial increase in the cost of assembling the data.

### 3. Processing the Data

The raw data on the questionnaires were then prepared for transference onto I.B.M. punch cards by means of an elaborate coding system which was devised for the purpose. Over 1,000 man hours were spent by the law student research assistants in this coding operation (41). The information on each questionnaire filled 10 I.B.M. punch cards of 80 columns each, for a total number of 5,900 cards (42). The staffs of the Department of Transport (43), the Department of Highways (44), and the I.B.M. Data Centre (45) shared the extensive programming work. By the early spring of 1965, the committee had prepared scores of charts ready to be analyzed.

### E. THE PLAN OF THE REPORT

The report opens with a brief glimpse at the total economic losses and the total recoveries, both from tort and non-tort resources in Chapter II. This is followed by a detailed examination in Chapter III of the economic losses suffered by the people injured in automobile accidents. Chapter IV describes the pattern of tort recovery and Chapter V explores the role of the courts and the lawyers in effectuating these tort payments. Chapter VI is devoted to the non-tort sources of compensation and in Chapter VII the combined recovery picture, which includes recovery from both tort and non-tort regimes, is discussed. The report then presents the attitudes expressed by the respondents toward the present system in Chapter VIII and ends with a summary and conclusions in Chapter IX. Throughout the entire work numerous charts and tables are utilized to depict the results of various calculations and analyses (46).

A few words of caution must be sounded to the reader at this juncture. Not all of the data gathered during the study were fully analyzed and described in this report. Some of the data were omitted completely from analysis and consideration, some were partially assessed and some given a rather full treatment. The careful reader may discover that not all of the statistics given correspond exactly. For example, since this study rounded all of the percentage figures to the nearest tenth of 1%, there are some places where all of the percentage figures outlined add up to 100.1%, 100.2%, 99.9% or even 99.8% instead of 100.0%. Rather than falsify the figures in order to make them come out perfectly, it was decided to ignore these tiny inconsistencies. This problem of rounding errors will be seen, as well, in a few of the charts where

the totals do not balance perfectly. Some small irregularities resulted from the use of different sample bases for certain statistical estimates (47).

Moreover, statistical estimates were not done in all cases, nor were confidence

limits provided in all of the cases in which estimates were done. Where the

have been calculated (48), footnotes will indicate the statistical variance;

most of which were done to 90% precision limits; where they have not been

calculated, the footnotes will so indicate as well (49).

## CHAPTER I

### Footnotes

- (1) See Keats, the Insolent Chariots (1958) for a humorous but incisive description of "The Years of our Ford". See also, O'Connell, Taming the Automobile, 58 Northwestern L. Rev. 299 (1963).
- (2) For example, in 1931 there were 9,241 reported accidents, in 1941 there were 18,167 and in 1951 there were 54,920. Statistics supplied by Accident Statistics Branch, Ontario Department of Transport.
- (3) The 1962 figures in the Canada Year Book (1963-64) at p.775 disclose that 5,774,810 automobiles were registered in Canada, which number has increased. The mile figure is an estimate based on the Ontario Calculations, infra.
- (4) In 1963 there were 2,552,803 drivers licensed and 2,262,826 vehicles registered.
- (5) For example, in 1931 there were 562, 216 vehicles registered which drove over 3 billion miles; in 1941, there were 739,194 vehicles which drove nearly 5 billion miles and by 1951 there were 1,205,098 vehicles which drove almost 9 billion miles.
- (6) Supra note 2.
- (7) In 1961, 266,687 accidents killed 3,426 and injured 99,263. See Canada Year Book (1963-64) at p.782.
- (8) Accident Facts (1963) at p.25 (a publication of the Ontario Department of Transport).
- (9) For a more detailed description of the tort system see infra Chapter IV.
- (10) For a more detailed description of the social welfare system of Ontario, see infra Chapter VI.
- (11) Most eloquent of these critiques is Ehrenzweig, Full Aid Insurance for the Traffic Victim (1954). See also Green, Traffic Victims: Tort Law and Insurance (1958); Keeton and O'Connell, Basic Protection for the Accident Victim (1965) summarized in 78 Harv. L. Rev. 329 (1964).
- (12) Morris and Paul, The Financial Impact of Automobile Accidents, 110 U. Pa. L. Rev. 913 (1962); Conard, Morgan and Others, Automobile Accident Costs and Payments (1965).
- (13) Zeisel, Kalven, Bucholz, Delay in Court (1961); Remarks of G.A. Gale, C.J.H.C. 1965.
- (14) See supra note 11; see also Wright, Remarks reported in Toronto Globe and Mail, March 15, 1962; McRuer, C.J.H.C. (as he then was) Remarks reported in Toronto Daily Star, 1962.

- (15) See Wright, Comment (1945) 23 Can. Bar Rev. 344; Morton, Comment, (1958) 36 Can. Bar Rev. 414 and my articles at (1962) 40 Can. Bar Rev. 284 and (1963) 41 Can. Bar Rev. 593.
- (16) The most intelligent of the recent literature is Kalven and Blum, Public Law Perspectives on a Private Law Problem - Auto Compensation Plans (1965), also found in 31 U. of Chi. L. Rev. 641 (1964); See also Somerville, The Motorists' Compensation Board, (1962) 5 Can. Bar J. 35.
- (17) Ibid.
- (18) The major reforms were the complete re-organization of the old Unsatisfied Judgment Fund and the raising of the lowest insurance limits permissible to \$35,000 inclusive. Although in theory liability insurance is not compulsory, those who are uninsured must pay \$20 into the Motor Vehicle Accident Claims Fund, which device has resulted in over 97% coverage. See Motor Vehicle Accident Claims Act, s.o. 1961-62, c.84.
- (19) See Final Report of the Select Committee on Automobile Insurance (1963) at p.9-10.
- (20) Amounts would range up to \$10,000 cash. See Final Report, ibid.
- (21) Any excess over the amounts paid by the Ontario Hospital Services Commission.
- (22) Up to \$350 in addition to the \$2,000.
- (23) Such studies have been conducted recently in Michigan, Pennsylvania and New York. See Conard, et al., Automobile Accident Costs and Payments (1965); Conard, The Economic Treatment of Automobile Injuries, 63 Mich. L. Rev. 279 (1964); Morris and Paul, The Financial Impact of Automobile Accidents, 110 U. Pa. L. Rev. 913 (1962); Adams, Economic-Financial Consequences of Personal Injuries Sustained in 1963 Philadelphia Automobile Accidents (1955); Franklin, Chanin and Mark, Accidents, Money and the Law, 61 Colum. L. Rev. 1 (1961); Prof. Adams is now completing an extensive study of the Saskatchewan scheme.
- (24) This study was made possible by substantial financial assistance provided by the Ontario Department of Transport. The officials of the department including Messrs. McNab, Earl, Pillgrem, Bell and Cooke were most helpful and cooperative.
- (25) I am indebted to Mr. James Rendall, now professor of law at the University of Western Ontario, who acted as Assistant to the Director of the Study.
- (26) Mr. L. Morrison, with the assistance of Mrs. Pat Whitty and Mr. Brian Neill of the Department of Transport, were in charge of this aspect of the operation. Dr. D. B. DeLury, of the University of Toronto provided valuable advice.
- (27) Major E. J. Hughes, of the Accident Statistics Division, did yeoman work in extracting the accident reports from the files and in offering much in the way of explanation and advice.
- (28) All accidents involving personal injury or property damage apparently exceeding \$100 must be reported to the police in Ontario, see Highway Traffic Act, R.S.O. 1960, c.172, s.143(1).
- (29) The experience of the University of Pennsylvania study forwarned us of the danger of devoting too much effort to the study of trivial injuries.
- (30) The accident records of the Department of Transport contain a description of the injuries received. They are collected in twelve different categories as follows:
1. Fractured skull
  2. Fractured spine
  3. Other fractures
  4. Concussion of brain
  5. Severe general shock with bruises and cuts
  6. Slight shock and shake-up
  7. Internal injuries
  8. Other injuries (sprains, dislocations, wrenches, etc.)
  9. Cuts by glass (only)
  10. Drowned
  11. Burned
  12. Asphyxiated
- The "fatal" accidents were defined as done by the Department. The "serious" injury stratum was defined as categories 1,2,3,4, and 7 since severe financial losses and permanent disability were more likely to be encountered here. It was felt that an initial survey as done in the Michigan Study was not necessary where the nature of the injury is spelled out, as in Ontario. On the whole this estimate was well borne out, although a few respondents in the serious category suffered only small economic losses. The "minor" injury stratum comprised the balance of the injury cases, categories 5,6,7,8,9,10,11 and 12, even though, as expected, a few of these respondents had substantial losses. By and large, these individuals suffered only small financial losses.
- (31) The statistical advisers felt that since the fatal and serious strata would have the wider loss and recovery fluctuations, samples of larger proportions were required. The fact that we would be able to locate and interview ultimately only about one-half of the respondents, influenced this decision as well.
- (32) Five questionnaires were discarded as containing insufficient information: one fatal, two serious and two minor, and were not counted in the total of 590.
- (33) In the cases of fatal accidents and injuries to children under 18 years of age at the time of the accident, interviews were conducted with near relations.

- (34) B. Applebaum, B. Cugelman, J. Freyseng, A. Glasner, W. Hobson, R. J. D. Arnup, Q.C., the Treasurer of the Law Society of Upper Canada; E. Merkur, M. Rain, R. Sommers, L. Weisdorf, all of Osgoode Hall Law School, Toronto. W. C. G. Howland, Q.C., the Chairman of the Legal Education Committee; Dean H. A. Leal, of the Osgoode Hall Law School; Mr. R. H. Humphreys and Mr. H. M. Davies of the Department of Transport; E. H. S. Piper, Q.C.; Professors A. F. Conard and J. N. Morgan of the University of Michigan; Professors John Adams and Wayne Snider of Temple University and Professor Clarence Morris of the University of Pennsylvania.
- (35) The study was fortunate in having as a consultant during this period Mr. Arthur Rabelow, of the Philadelphia Bar, who had assisted Professor Morris and Paul in the University of Pennsylvania study, supra, note.
- (36) Appendix I is a copy of the standard letter which was used. Slight modifications were made in the cases of children or fatal accidents.
- (37) Much was gleaned from similar letters used by Professors Conard and in their studies. Professors Lucas and Jenkins of the University of Toronto offered valuable criticism and advice.
- (38) Much assistance was provided by the questionnaires used previously in Michigan, Pennsylvania and Temple. Professors Lucas and Jenkins were consulted and a sizable group of lawyers, insurance men and government officials, who were sent drafts of the questionnaire for comments, and many valuable suggestions.
- (39) Appendix II is a copy of the questionnaire used in the injury cases; a slightly modified form was used in the fatal accident cases.
- (40) Virtually no difficulties were encountered either in securing the signatures or in obtaining the cooperation of hospitals, doctors and lawyers.
- (41) Which was completed by October 30, 1964. In addition to the students named above in footnote 34, A. Price and A. Pollack assisted in this procedure.
- (42) The staff of the Department of Transport key-punched these cards, under the effective and willing supervision of Mrs. Jamieson.
- (43) Mr. Frank Brence was an enthusiastic adviser.
- (44) Mr. John Trebalco was of great assistance in this endeavour.
- (45) The bulk of the work was done by Mr. Anthony Kicinski, whose skill and patience was appreciated.
- (46) The report was cheerfully typed by Miss Rita Smith, who took over from Mrs. Lillian Miller as secretary to the study.
- (47) Which occurred because of the existence of a number of "don't know" answers.
- (48) This work was done under the supervision of Mr. Martin Kramer, assisted by Professor Srivastava, both of the University of Toronto.
- (49) I am grateful to Mr. Jerry Herman, of Oakland, California, who read the manuscript and offered many valuable criticisms and suggestions;

Dear Sir or Madam:

As you may have noticed in the newspaper, we are doing a study of Ontario Automobile Accidents which resulted in personal injuries in 1961. The purpose of the study is to ascertain the costs which result from these accidents and how these costs are met. The findings of this study will be considered by the Province of Ontario in deciding whether our system of compensation for persons injured in automobile accidents should be changed.

You are among the several hundred people who have been selected at random to give a representative cross-section of the individuals affected. One of our research assistants will get in touch with you within the next few weeks to arrange an interview. The interview will be concerned with a number of questions about the effect of the accident on you and your family. The statistical accuracy of our findings will depend upon the response of you and other people selected. It is important to us to talk to all of you, whether your injury was serious or slight. Your co-operation will be greatly appreciated and will assist us in a study which we believe is of profound social importance.

All information which you give will be treated with the strictest confidence. It will be combined with the answers of others like you to give an overall statistical picture of the effect of personal injury accidents, but neither your name nor your individual answers will be disclosed to anyone.

If you have any other questions about the study, please telephone Professor Allen M. Linden, the Director of this study, at Osgoode Hall Law School. The telephone number is 362-4741, extension 59.

Would you be kind enough to complete the enclosed card and mail it to us? It requires no postage. This will enable us to confirm that we have this information correctly. Your co-operation is vital to the success of this study. Please let us hear from you soon.

Yours very truly,

W. Allan Neal

H. Allan Leal, Dean,  
Osgoode Hall Law School.

Questionnaire No. \_\_\_\_\_

Victim No. \_\_\_\_\_

1. INJURED PERSON AND ACCIDENT INFORMATION

First of all I would like to ask you some general questions about the accident and about the person who was injured in it:

- (a) Name of Injured Person \_\_\_\_\_
- (b) Address \_\_\_\_\_
- (c) Telephone \_\_\_\_\_ (d) Sex      (e) Age      Metro      Other      Rural      Other       
M F Urban Ont.
- (f) What was your occupation at the time of the accident? \_\_\_\_\_
- (g) Person(s) Interviewed
- Name \_\_\_\_\_ Address \_\_\_\_\_ Tel. \_\_\_\_\_
- Name \_\_\_\_\_ Address \_\_\_\_\_ Tel. \_\_\_\_\_
- (h) What is your relation to I.P. spouse      child      parent      other      no       
rel. rel.
- (i) Date of Accident \_\_\_\_\_
- (j) Place of Accident (Highway or Street) \_\_\_\_\_  
Municipality \_\_\_\_\_ Metro      Other      Rural      401       
Urban
- (k) What type of accident was it?  
i) 2 or more motor vehicles \_\_\_\_\_  
ii) Pedestrian and motor vehicle \_\_\_\_\_  
iii) Motor vehicle and street car, train, motorcycle, etc. \_\_\_\_\_  
iv) Motor vehicle and bicycle \_\_\_\_\_  
v) Fixed object or non-collision \_\_\_\_\_  
vi) Other, specify \_\_\_\_\_
- (l) Into which of the following categories did the Injured Person fall?  
Was he a: Driver      Pedes.      Pass.      Bicyclist      Other
- (m) (If a passenger) What was your relation to the driver?  
child      spouse      other      friend      pass.      car pool      other       
rel. for comp.
- Details \_\_\_\_\_  
\_\_\_\_\_
- (n) How many other people were injured in the accident? \_\_\_\_\_
- (o) Were they in your car, the other car or what? \_\_\_\_\_  
\_\_\_\_\_
- (p) Were any of them related to you? \_\_\_\_\_  
\_\_\_\_\_
- (q) How badly injured were they? \_\_\_\_\_

2. INJURIES, MEDICAL TREATMENT AND EFFECT ON FAMILY

Next, I would like to ask a few questions about your injuries, medical treatment and the effect of this on your family.

- (a) What were the nature of your physical injuries? (Probe \*)
- i) fatal \_\_\_\_\_
  - ii) fractured skull \_\_\_\_\_
  - iii) fractured spine \_\_\_\_\_
  - iv) other fracture (give details) \_\_\_\_\_
  - v) loss of limb (specify) \_\_\_\_\_
  - \* vi) concussion (describe) \_\_\_\_\_
  - \*vii) internal injuries (specify) \_\_\_\_\_
  - \*viii) whiplash (describe) \_\_\_\_\_
  - \* ix) cuts, bruises, shock \_\_\_\_\_
  - \* x) other, (specify) \_\_\_\_\_
- (b) i) Were you taken to the hospital after the accident? yes no
- ii) Which one? \_\_\_\_\_
  - iii) How many days did you spend in the hospital? \_\_\_\_\_
  - iv) We may wish to contact the hospital to complete our statistical records. Do you mind if we do? may contact objects
- (c) i) Were you treated by a doctor as a result of the accident? yes no
- ii) Which one? Name \_\_\_\_\_ Address \_\_\_\_\_
  - iii) Any other? Name \_\_\_\_\_ Address \_\_\_\_\_
  - iv) How long (in weeks) were you under his care? \_\_\_\_\_
  - v) How many times did he see you with relation to your injuries? \_\_\_\_\_
  - vi) We may wish to contact your doctor to complete our statistical records. Is that all right? may contact objects
- (d) i) Was there any pain as a result of your injury? no slight severe
- ii) How long did the pain continue? in weeks still suffering
  - iii) Has there been any permanent impairment as a result of the accident? (specify) \_\_\_\_\_
  - iv) Does this disability affect your work? (specify) \_\_\_\_\_

2. (cont'd) INJURIES, MEDICAL TREATMENT AND EFFECT ON FAMILY

- (e) i) Were you confined to your home after the accident? yes no
- ii) How many days? \_\_\_\_\_
  - iii) How long was it before you were able to return to work(school)? \_\_\_\_\_ days
  - iv) How long was it before you were completely able to do your normal routine? \_\_\_\_\_ days
- (f) i) In what range would you place your gross earnings per year at the time of accident?
- |           |   |          |       |
|-----------|---|----------|-------|
| A. Under  | - | \$1,000. | _____ |
| B. 1,000. | - | 2,000.   | _____ |
| C. 2,000. | - | 3,000.   | _____ |
| D. 3,000. | - | 4,000.   | _____ |
| E. 4,000. | - | 5,000.   | _____ |
| F. 5,000. | - | 7,000.   | _____ |
| G. 7,000. | - | 10,000.  | _____ |
| H. Over   | - | 10,000.  | _____ |
- ii) (If Respondent is not the chief supporter of family) In what range would you place the gross annual earnings of the chief supporter in your family at the time of accident?
- |           |   |          |       |
|-----------|---|----------|-------|
| A. Under  | - | \$1,000. | _____ |
| B. 1,000. | - | 2,000.   | _____ |
| C. 2,000. | - | 3,000.   | _____ |
| D. 3,000. | - | 4,000.   | _____ |
| E. 4,000. | - | 5,000.   | _____ |
| F. 5,000. | - | 7,000.   | _____ |
| G. 7,000. | - | 10,000.  | _____ |
| H. Over   | - | 10,000.  | _____ |
- (g) i) After the accident did you go back to the same kind of job that you had before? yes no (Describe new job) \_\_\_\_\_
- ii) If not, was any retraining necessary? yes no
  - iii) Was your present income affected by the accident? yes no
  - iv) (If yes) In what way? \_\_\_\_\_
  - v) In what range would you place your gross earnings per year at the present time?
- |           |   |          |       |
|-----------|---|----------|-------|
| A. Under  | - | \$1,000. | _____ |
| B. 1,000. | - | 2,000.   | _____ |
| C. 2,000. | - | 3,000.   | _____ |
| D. 3,000. | - | 4,000.   | _____ |
| E. 4,000. | - | 5,000.   | _____ |
| F. 5,000. | - | 7,000.   | _____ |
| G. 7,000. | - | 10,000.  | _____ |
| H. Over   | - | 10,000.  | _____ |
- (g) What was the effect of all this on your family? (Probe \*)
- i) Did you have to move? \_\_\_\_\_
  - ii) Did a child leave school (or delay schooling)? \_\_\_\_\_
  - iii) Did your wife go to work? \_\_\_\_\_
  - \* iv) Did you have to sell any property? \_\_\_\_\_
  - \* v) Did you borrow money? \_\_\_\_\_
  - \* vi) Did you have to accept financial assistance? \_\_\_\_\_
  - \*vii) Other, specify \_\_\_\_\_

3. INSURANCE INFORMATION

Now I would like to ask a few questions about insurance coverage.

(a) At the time of the accident, were you covered by insurance for any of the following things?

- |                                     |               |               |                   |
|-------------------------------------|---------------|---------------|-------------------|
| i) Collision                        | <u>      </u> | <u>      </u> | <u>      </u>     |
|                                     | yes           | no            | Deductible amount |
| ii) Public Liability                | <u>      </u> | <u>      </u> |                   |
|                                     | yes           | no            |                   |
| iii) Comprehensive                  | <u>      </u> | <u>      </u> |                   |
|                                     | yes           | no            |                   |
| iv) Medical payments coverage       | <u>      </u> | <u>      </u> |                   |
|                                     | yes           | no            |                   |
| v) P.S.I., etc.                     | <u>      </u> | <u>      </u> |                   |
|                                     | yes           | no            |                   |
| vi) O.H.S.C., etc.                  | <u>      </u> | <u>      </u> |                   |
|                                     | yes           | no            |                   |
| vii) Life Insurance                 | <u>      </u> | <u>      </u> |                   |
|                                     | yes           | no            |                   |
| viii) Accident & Sickness Insurance | <u>      </u> | <u>      </u> |                   |
|                                     | yes           | no            |                   |
| ix) Disability Insurance            | <u>      </u> | <u>      </u> |                   |
|                                     | yes           | no            |                   |
| x) Other, specify _____             | <u>      </u> | <u>      </u> |                   |
|                                     | yes           | no            |                   |

(b) By what insurance are you now covered?

- |                                     |               |               |                   |
|-------------------------------------|---------------|---------------|-------------------|
| i) Collision                        | <u>      </u> | <u>      </u> | <u>      </u>     |
|                                     | yes           | no            | Deductible amount |
| ii) Public Liability                | <u>      </u> | <u>      </u> |                   |
|                                     | yes           | no            |                   |
| iii) Comprehensive                  | <u>      </u> | <u>      </u> |                   |
|                                     | yes           | no            |                   |
| iv) Medical payments coverage       | <u>      </u> | <u>      </u> |                   |
|                                     | yes           | no            |                   |
| v) P.S.I., etc.                     | <u>      </u> | <u>      </u> |                   |
|                                     | yes           | no            |                   |
| vi) O.H.S.C., etc.                  | <u>      </u> | <u>      </u> |                   |
|                                     | yes           | no            |                   |
| vii) Life Insurance                 | <u>      </u> | <u>      </u> |                   |
|                                     | yes           | no            |                   |
| viii) Accident & Sickness Insurance | <u>      </u> | <u>      </u> |                   |
|                                     | yes           | no            |                   |
| ix) Disability Insurance            | <u>      </u> | <u>      </u> |                   |
|                                     | yes           | no            |                   |
| x) Other, specify _____             | <u>      </u> | <u>      </u> |                   |

4. ECONOMIC LOSSES AND RECOVERIES FROM OWN INSURANCE, GOVERNMENT AND OTHER NON-LITIGATION SOURCES

I would now like to run over your expenses as a result of the accident, the help that you may have received in meeting these expenses (other than from the other person) and the length of time that passed before you received the help.

Losses	Amounts	Recoveries	Amounts	Time (in weeks) after exp. incurred
(a)				
Hospital (inc. x-ray, nursing homes, etc.)	<u>      </u>	O.H.S.C.	<u>      </u>	<u>      </u>
		Blue Cross (or other insurance)	<u>      </u>	<u>      </u>
		Gov't payments Workmen's Comp.	<u>      </u>	<u>      </u>
		Welfare	<u>      </u>	<u>      </u>
		Other Gov't	<u>      </u>	<u>      </u>
		Other _____	<u>      </u>	<u>      </u>
(b)				
Medical expenses (including Therapy, Nursing, etc.)	<u>      </u>	P.S.I. (or other insurance)	<u>      </u>	<u>      </u>
		Gov't payments Workmen's Comp.	<u>      </u>	<u>      </u>
		Welfare	<u>      </u>	<u>      </u>
		Other Gov't	<u>      </u>	<u>      </u>
		Other _____	<u>      </u>	<u>      </u>
(c)				
Drugs and Equipment	<u>      </u>	Own Insurance	<u>      </u>	<u>      </u>
		Gov't payments Workmen's Comp.	<u>      </u>	<u>      </u>
		Welfare	<u>      </u>	<u>      </u>
		Other Gov't	<u>      </u>	<u>      </u>
		Other _____	<u>      </u>	<u>      </u>
(d)				
Damage to Automobile	<u>      </u>	Own Collision Ins.	<u>      </u>	<u>      </u>
		Other _____	<u>      </u>	<u>      </u>
(e)				
Income Loss to date	<u>      </u>	Own Insurance	<u>      </u>	<u>      </u>
		Gov't payments Workmen's Comp.	<u>      </u>	<u>      </u>
		Welfare	<u>      </u>	<u>      </u>
		Other Gov't	<u>      </u>	<u>      </u>
		Employer's Contractual payments	<u>      </u>	<u>      </u>
		Other _____	<u>      </u>	<u>      </u>



4. (cont'd) ECONOMIC LOSSES AND RECOVERIES FROM OWN INSURANCE, ETC.

<u>Losses</u>	<u>Amounts</u>	<u>Recoveries</u>	<u>Amounts</u>	<u>Time (in weeks) after exp. incurred</u>
(f) <u>Other Expenses</u>		<u>Other Receipts</u>		
Ambulance	_____	Employer (Voluntary)	_____	_____
Taxis	_____	Relatives	_____	_____
Housekeeper	_____	Friends	_____	_____
Other property	_____	Other	_____	_____
Other	_____			
<hr/>				
Total Expenses	_____	Total Own Ins.	_____	Gov't _____ Other _____
<hr/>				
Total non-litigation recovery _____				

(g) Do you think that you will have any other expenses in the future?

Future Losses

Income \_\_\_\_\_

Hospital & Medical \_\_\_\_\_

Other \_\_\_\_\_

TOTAL \_\_\_\_\_

(h) Do you think that you will recover anything from any other source (excluding the other person) in the future?

Future Receipts

Own Insurance \_\_\_\_\_

Government payments \_\_\_\_\_

Other \_\_\_\_\_

TOTAL \_\_\_\_\_

(i) (Do not write in this space.)

(Estimate of General Damages, including pain and suffering \_\_\_\_\_)

5. TORT RECOVERY AND LITIGATION

We are interested in the help and advice that people get after an accident and whether they make a claim against the other party.

- (a) Did you make any claim against the other person(s) in the accident or against his insurer? yes no
- (b) (If not) Why not? \_\_\_\_\_
- (c) Did you consult a lawyer to help you? yes no Name \_\_\_\_\_
- (d) (If not) Why not? \_\_\_\_\_
- (e) (If yes) How long after the accident? \_\_\_\_\_ (in weeks)
- (f) Did you retain this lawyer yes no Another lawyer? yes no
- (g) (If not) Why not? \_\_\_\_\_
- (h) If yes) When? \_\_\_\_\_
- (i) We may want to contact your lawyer for further statistics. Would you mind if we did this? may contact objects
- (j) Did you actually receive anything by way of settlement from the other person or his insurer? yes no
- (k) (If no) Why do you think that you received nothing in settlement?  
\_\_\_\_\_  
\_\_\_\_\_
- (l) (If yes) I'd like to find out something about the settlement. How much were the total legal expenses and court costs? \_\_\_\_\_
- (m) How much did you actually recover after legal fees, and how long after the accident did you recover it?
- i) from the other person's insurer \$ \_\_\_\_\_ When? \_\_\_\_\_ months
- ii) from the other person himself \$ \_\_\_\_\_ When? \_\_\_\_\_ months
- iii) from the Unsatisfied Judgment Fund \$ \_\_\_\_\_ When? \_\_\_\_\_ months
- iv) Other, specify \$ \_\_\_\_\_ When? \_\_\_\_\_ months
- (n) What made you decide to settle? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (o) i) Was there agreement as to the percentage of fault on your part and on the part of the other person? yes no d.k.
- ii) (If yes) Claimant \_\_\_\_% Other person \_\_\_\_%
- (p) Did you have to pay back anything from the amount you recovered?  
(explain) \_\_\_\_\_  
\_\_\_\_\_



6. (cont'd) ATTITUDES

- (k) Do you think that automobile accident cases ought to be tried by a judge and jury, by a judge alone, or in some other way?

\_\_\_\_ judge \_\_\_\_ jury \_\_\_\_ other, specify \_\_\_\_ d.k.

Why? \_\_\_\_\_

- (l) Would you favour an automobile accident compensation system of this type: A special kind of insurance would be sold along with all automobile liability policies. It would provide limited benefits for actual expenses, such as medical and hospital expenses and loss of income, to everyone who was injured in an automobile accident, regardless of fault. However, the injured person would still be allowed to sue in the courts if he could prove that the other person was at fault?

\_\_\_\_ yes \_\_\_\_ no \_\_\_\_ d.k.

Why? \_\_\_\_\_

(If asked: It would cost something extra, private insurance companies would operate it, there would be a deduction from the trial recovery of the amount recovered under this system.)

- (m) Can you think of anything else that should be done to make things easier for people who are hurt in automobile accidents in the future?

7. CLERICAL

(Hand authorization to be signed)

- (a) Would you mind signing these slips so that we may give them to your doctor, lawyer or hospital if it is necessary to contact them? \_\_\_\_\_ agrees \_\_\_\_\_ refuses

(b) Date completed \_\_\_\_\_

(c) If incomplete, state why \_\_\_\_\_

(d) Signature of Interviewer \_\_\_\_\_

(e) (Check back should be made on this respondent or check other records?)

\_\_\_\_ yes \_\_\_\_ no Why? \_\_\_\_\_

AUTHORIZATION

\_\_\_\_\_, 1964.

To: \_\_\_\_\_

I hereby authorize and direct you to give to the Osgoode Hall Study on Compensation for Victims of Automobile Accidents any reports or information which may be requested, and this shall be your good and sufficient authority for so doing.

AUTHORIZATION

\_\_\_\_\_, 1964.

To: \_\_\_\_\_

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CHAPTER II - TOTAL OF ECONOMIC LOSSES  
AND TOTAL RECOVERIES

A. Estimated Total Losses in the Universe

The magnitude of this problem of economic losses and compensation is awesome. In the County of York in 1961 the total estimated economic losses were \$14,437,000. (1) Only the hard core financial losses are included. This amount does not include any amount for pain suffering at all. Across the province the losses would amount to between 40 and 50 million dollars per annum. Adding to the gravity of the situation is the fact that these amounts climb each year as the number of automobiles increases, as the number of miles driven increases, and as the cost of services increases.

B. Estimated Total Tort Recovery in the Universe

The estimate of the total amount recovered from the other person, his insurer or the Unsatisfied Judgment Fund was \$3,347,000. (2) or 37.2% of the total economic losses. It must be pointed out, however, that this does not mean that each individual who suffered loss received in tort recovery 37.2% of his loss. Nothing could be further from the truth. The majority of the injured people received nothing at all from the other person, many received varying portions of what they lost, and a fair number received more than their actual economic loss. This situation arises from the fact that there are many people who are unable to establish that another person negligently caused or contributed to their loss. On the other hand, there are many people who recover more money than they have lost. One explanation is that they may have recovered an amount for pain and suffering from another person in addition to their economic losses. Some people may recover the same loss from several different sources. The law does not allow a defendant to pay less merely because the plaintiff has insured himself. (3)

TABLE II - 1

TOTAL LOSSES AND RECOVERIES

(Estimated total of economic losses, total tort recovery, total non-tort recovery and combined totals of tort plus non-tort recovery in the universe estimated to nearest thousand dollars and arranged according to type of injury)

	Economic Losses in Universe	Total Tort Recovery in Universe		Total Non-tort Recovery in Universe		Combined Total Tort plus non- tort Recovery in Universe	
		Amount	%	Amount	%	Amount	%
MINOR INJURIES	\$4,537,000	3,259,000	71.8	(±99,000) 1,484,000	32.7	4,743,000	104.5
SERIOUS INJURIES	4,340,000	1,981,000	45.6	(±266,000) 1,230,000	28.3	3,212,000	74.0
FATAL INJURIES	5,560,000	115,000	2.1	(±229,000) 632,000	11.4	747,000	13.4
ALL CASES	14,437,000	5,355,000	37.2	(±501,000) 3,347,000	23.2	8,702,000	60.4

C. Estimated Total Non-Tort Recovery in the Universe

In addition to the tort recovery the injured people recovered from various other sources. It is easy for lawyers to ignore these sources in considering this problem, but they play a significant role in the overall compensation picture. These sources include private insurance such as hospital, medical, collision, disability or life insurance and others. They include various government welfare programmes such as general welfare assistance, workmen's compensation, disability benefits and others. They also include other sources such as medical payments coverage, voluntary and contractual employer's payments of lost wages, assistance from relatives and waiver of accounts and other such sources.

The total amount recovered from non-tort sources by all the injured people in the County of York in 1961 is estimated at \$3,347,000 (4) or 23.2% of the total losses suffered. Again it cannot be assumed that all of the injured individuals receive about one-fourth of their losses from this type of source. Many are fully or almost fully compensated from these sources alone. Many receive nothing at all and, of course, there are many who receive a portion of their losses only.

D. Estimated Combined Total of Tort Recovery plus Non-Tort Recovery in the Universe

By adding the estimated amount of tort recovery to the estimated amount of non-tort recovery secured by all of the injured in York County in 1961, we get \$8,702,000<sup>(5)</sup> or 60.4% of the total estimated losses of \$14,437,000. Again, one must be cautioned against believing that these totals and averages reflect the position of the typical individuals

involved. These figures are given solely to enable one to see the entire scope of the problem in perspective.

E. Comparison of Percentages of Total Recoveries to Economic Losses According to Type of Injuries

By examining the table, one may be disturbed to find that on the whole the people with minor injuries seem to be better looked after than the seriously injured. The families of the fatally injured, who may need aid the most, receive the smallest proportion of their losses from each source and from the combined sources.

All of the people with minor injuries in the universe recovered \$3,259,000 from the various tort sources or 71.8% of their total losses.(6) In addition, these people recovered \$1,484,000 from non-tort sources (7) or 32.7% of their total losses. The combined total of recovery from both tort and non-tort sources in the minor cases was estimated at \$4,743,000 or 104.5% of the total losses. (8)

In the serious injury cases, the total recoveries from all sources are lower. An amount of \$1,981,000 was recovered from tort sources. (9) This amounts to 45.6% of the loss. Total recoveries from non-tort sources came to \$1,230,000 (10) or 28.3% of the losses. The combined total of recovery from both major sources totalled \$3,212,000 or 74% of the losses. (11)

In the fatal cases the recovery percentages are far smaller. Only \$115,000 or 2.1% of the losses was recovered through the tort system (12) and \$632,000 (13) or 11.4% of the losses was recovered through the other compensation regimes. The total recovery from both sources amounted to \$747,000 or 13.4% of the economic losses. (14)

In conclusion, the total recovery percentages are higher in the less serious cases and lower in the more serious cases. This pattern holds true both in the tort system and the non-tort system. These disparities are much sharper in the tort system where the percentages of total recoveries fluctuate more widely than they do in the non-tort recoveries. These figures provide only an overall glimpse at the recovery pattern, but they serve as a preview of the uneven recovery picture that will unfold.

FOOTNOTES - CHAPTER II

- (1) Variances  $\pm 2,190,000$ , confidence limit 90%. This means that there is a 90% chance that the actual figures, if assembled, would fall within \$2,190,000 more or less than the estimated amount of \$14,437,000. Hereafter confidence limits are 90% unless otherwise indicated.
- (2) No confidence limits given.
- (3) See generally, Fleming, Torts, (3d Ed. 1965) at p. 217
- (4)  $\pm 502,000$ .
- (5) No confidence limits given.
- (6) No confidence limits given.
- (7)  $\pm 99,000$ .
- (8) No confidence limits given.
- (9) No confidence limits given.
- (10)  $\pm 266,000$ .
- (11) No confidence limits given.
- (12) No confidence limits given.
- (13)  $\pm 229,000$ .
- (14) No confidence limits given.



A. Method of Calculating Losses

1. General

There are two general kinds of losses suffered by people as a result of being injured in an automobile accident. The first kind of loss is financial or "economic loss", which includes doctor and hospital expenses, automobile repairs and income losses, both present and future. The other kind of loss is mental or "psychic loss". These losses include pain and suffering, mental suffering because of the loss of a close relative, loss of enjoyment of life, and the like. (1) This study is primarily engaged in calculating "economic losses" rather than "psychic losses". These latter types of losses are measured by a judge or jury in the trial of motor vehicle actions, but they are difficult to assess with accuracy in abstracto. An attempt has been made, however, to estimate the amount of general damages that would have been awarded in a number of the serious injury cases. Some comparisons have been done upon these figures.

The economic losses that were calculated were losses to the individual rather than losses to the family unit, or losses to society. Losses to the family would have been a meaningful object for study. However, it would have been more complicated and it would not have reflected as clearly the position of the individual who is injured. It may have distorted to some degree the loss suffered by unmarried persons, whose financial problems are often greater because there are no children and no wives to share the cost burden of an accident. In any event, some analysis of the impact on the family crept into the study. Specific questions were asked about the necessity for wives or children to go to work and whether any family property had to be sold as a result of the accident. Similarly, in cases of injuries to wives or children, bills



incurred by the fathers on their behalf were considered as losses to the children or wives. Insurance payments provided by the fathers' insurance companies to them was included as insurance recovery by the children or wives. In other words, our guideline for the determination of the economic losses of women and children was the costs arising as a result of injury to a child or wife and any payments recovered for those losses by the family. In fatal accident cases, loss to the family also crept in. In these cases, in addition to the above items of loss, the costs of burial and future income losses were calculated as if these were losses to the individual who was killed.

The loss to society as a result of a motor vehicle accident is certainly worthy of study. The societal loss as a result of the death or total disability of a young doctor or businessman may very well be measurable by economists. But it was felt that this task could not be undertaken effectively in this investigation. This study was directed more to the plight of the individual who is injured in an accident.

Other studies have attempted to measure the total losses arising out of an accident to all the individuals involved in it. (2) Data have been gathered from all of the people involved in each accident to give a more complete picture of the effect of the accident. This procedure adds complexity to the statistics. It also creates problems where one of the participants in an accident cannot be located.

An "economic loss" may be suffered even though the victim is not out-of-pocket as a result thereof. For example, Mr. Jones is hospitalized for two days and incurs an expense of \$50 as a result. He is covered by the Ontario Hospital Services Commission which pays the entire \$50 to the hospital on his behalf. Although the injured person has not been

required to part with any of his own money, according to the method adopted by this study he has still suffered an economic loss of \$50.00. He has also had a recovery of \$50.00. It was believed that this technique would give a more accurate reflection of the various expenses incurred as a result of an automobile accident and of the various sources which assist in the payment of these expenses.

## 2. Economic Losses

### (a) Present Economic Losses

"Economic losses" were divided into "present economic losses" and "future economic losses." "Present economic losses" were those expenses or losses incurred up until the date of the interview. Where possible, present economic losses were assessed as a court would assess them. Where a choice had to be made we took the most conservative figures of the alternatives available. Hospital expenses, the cost of X-rays and nursing home expenses were included under the heading of "hospital losses". Doctor bills, private nurses' bills and the cost of physical therapy were entitled "medical expenses". "Drugs and equipment expenses" were handled separately in order to analyse medical and hospital costs apart from these two items. "Damage to the automobile" was included as an expense where the injured person was the owner of the motor vehicle or where the cost of its repair was borne by him. Thus, if an injured husband was joint owner of the motor vehicle with his wife and the husband or his collision insurance paid the cost of repairs, this expense would be included as his expense in full. If, however, the wife had been the owner of the motor vehicle herself, there would be no "damage to automobile" amount entered in the total losses suffered by the injured husband. Where the motor vehicle was a total loss, the amount

paid by the insurer, plus the deductible amount was taken as the value of the loss. In one or two instances the Canadian Red Book had to be utilized to estimate the value of a demolished motor vehicle that had been uninsured. (3) Under "Other Expenses" were included costs incurred for ambulance service, taxi-cab fares, housekeepers, loss or damage to personal property and any other item of loss. In the fatal accident cases the costs of funeral and burial, including the price of the burial plot, (4) were added to the expenses incurred as a result of the accident. Also added under other expenses were the legal fees incurred for the administration of the estate, but legal fees incurred to prosecute a claim were not included here.

"Income Loss" was the most important type of loss and the most difficult to measure. The study staff included the loss of income from the date of the accident until the date of the interview. If the injured person had already returned to work at the time of the interview, little difficulty arose. However, if he had been killed or permanently disabled, income loss continued to mount up to the date of interview and beyond. Because the respondents were injured on different dates throughout 1961 there was no common period over which each of them incurred loss. The staff for the study, after considering various alternatives, decided that nothing could be done to remedy any slight imperfections that might result from tabulating the amount of wages lost from the date of the accident to the interview date as present income loss.

Another problem with regard to income loss was the question of calculating income loss of a housewife or an unemployed person or a young person not yet in the work force at the time of the accident. A simple solution was adopted. Where there was no salary being earned by the injured person at the time of the accident, no loss of income figures would be included for the injured person. Potential salary which might have been earned was not calculated as an economic loss. The portion of the lost income destined for the Department of National Revenue was not deducted from the income loss figures. In the case of a fatal accident, the salary that the deceased would have earned to the date of the interview was included as present economic loss.

(b) Future Economic Losses

"Future economic losses" were more difficult to assess. These were the expenses that would be incurred by the injured person after the date of the interview. Where there was the expectation of specific further medical treatment or hospital care and the cost of this was known, it was included under "future hospital and medical loss". If there would be continuing expenses over a period of years, the present value of them was taken. Where there were to be continuing expenses for items like drugs, special shoes or physical therapy, the present value of these items were included in "other future loss". Where there was only a possibility of future expense no amount was included.

The most important and difficult matter was the treatment of future income loss. It was this item which loomed largest in the cases with huge losses or the "disaster cases". Where no income was being earned at the time of the accident, no future income loss was included. This was so even where an injured person had expected to commence work in the near future. In one case an eighteen year old student was killed in the summer.

He had planned to enter medical school in the fall and he had every prospect of being able to graduate and to qualify. No amount for future income loss was calculated. Where married women and where young children, who did not work were injured, no future income loss was assessed. Where income was being earned at the time of the accident by someone who had become disabled the future income loss was estimated to the date when the disability would cease, or to the planned retirement age if the disability was permanent. In the case of death, future income loss was calculated until the expected retirement age would be reached or where there was none, until 65 years of age, the most common retirement age in Ontario.

It was the present value of the future income loss that was calculated. An actuarial scientist prepared a table for this purpose. (5) The future earnings were discounted at the rate of 5%. This rate is commonly used by courts in Ontario. However, since the inflation factor increases dollar earnings at about 2% annually, the actual discount rate used in the table was 3%. No account was taken in this study of the more rapid increases in earnings of people with superior education. No deduction was made for the maintenance costs of the people who were deceased. (6)

An example of the method of calculation might be helpful. Mr. Smith was 40 years of age at the time he was injured in the accident. He would have been 43 at the time of the interview. He was earning a salary of \$5,000. per annum and he expected to retire at the age of 65. The annual wage was multiplied by the factor of 14.749 in the table to get \$73,745. This amount is entered as future income loss without any deductions for income tax or for maintenance expenses.

It will be noted that even though the study was attempting to assess the loss to the individual injured, in the case of fatal accidents some impurities entered into the figures. A person who is fatally injured may not have any personal loss. His estate may be responsible for some of his expenses. His lost future wages are really losses to his family. These lost wages and future loss of wages were still added to economic losses. The same procedure was followed even where the deceased had no immediate family.

In conclusion, the study assembled the economic losses to the individuals injured, which included both present and future losses. Where a choice was necessary the study erred on the side of conservatism. An attempt was made to look at present economic losses like a court would look at them. The future losses were kept separate, but the present value of these losses was calculated and included in the economic losses.

TABLE III - 1

TOTAL ECONOMIC LOSSES  
FOR VARIOUS TYPES OF EXPENSE

(Estimated total losses of the population according to type of injury, rounded to the nearest thousand dollars)

Type of Injury	Type of Present Loss				Other	Total
	Hospital	Medical	Collision	Income		
Minor	(±172,000.) 407,000	(±154,000.) 430,000	(±313,000.) 1,556,000	(±533,000.) 1,138,000	1,006,000	(±1,380,000.) 4,537,000
Serious	(±86,500.) 547,000	(±70,000.) 344,000	(±46,300.) 235,000	(±283,000.) 1,184,000	2,030,000	(±1,130,000.) 4,340,000
Fatal	8,000	12,000	23,000	(±270,000.) 1,081,000	4,436,000	(±1,270,000.) 5,560,000
All Cases	(±193,000.) 962,000	(±170,000.) 786,000	(±317,000.) 1,814,000	(±658,000.) 3,403,000	7,472,000	(±2,190,000.) 14,437,000

(Max.-Min. Figures)

B. Estimated Total of Economic Losses for Various Types of Expense

The total economic losses suffered by all persons injured in the County of York in 1961 were estimated at \$14,437,000 (7). This loss broke down into four major types of present loss: hospital costs were estimated at \$962,000 (8), medical loss \$786,000 (9), collision expense or damage to automobile \$1,814,000 (10), and income loss, the largest single item of present loss, was \$3,403,000 (11). Other types of loss including future losses totalled \$7,472,000 (12). See Table III-1 for a chart which depicts this.

The 10,413 people with minor injuries incurred \$4,537,000 (13) of this loss, the 1,283 seriously injured lost \$4,340,000 (14) and the 174 fatally injured lost \$5,560,000 (15).

All of the people who suffered minor injuries lost an estimated \$407,000 in hospital costs (16), \$430,000 in medical expenses (17), \$1,556,000 in collision losses (18) and \$1,138,000 in present income loss (19).

Those who suffered serious injuries lost \$547,000 in hospital expenses (20), \$344,000 in medical costs (21), \$235,000 collision loss (22) and \$1,184,000 income loss (23).

The 174 fatally injured incurred \$8,000 hospital costs (24), \$12,000 medical expenses (25), \$23,000 collision loss (26) and \$1,081,800 income loss (27).

TABLE III - 2

ECONOMIC LOSSES IN THE MINOR CASES

(Number of people in sample with various types of loss according to amount of loss.)

Amount of Loss	Hospital	Medical	Drugs	Collision	Income	Other	Total Present Loss	Total Future Loss	Total Economic Loss
Zero	53	108	187	148	171	150	20	219	20
1-49	150	72	317	4	9	55	83	0	83
50-99	4	16	0	3	7	10	16	2	16
100-199	8	20	2	12	13	8	21	0	20
200-299	3	5	0	11	10	0	13	0	12
300-499	5	3	0	22	5	3	18	2	19
500-999	2	1	0	22	6	0	36	0	37
1,000-1,999	1	1	0	4	2	0	13	0	12
2,000-4,999	0	0	0	0	3	0	5	1	4
5,000-9,999	0	0	0	0	0	0	1	2	2
Total Persons with Loss	173	118	39	78	55	76	206	7	206
Total Persons in Sample	226	226	226	226	226	226	226	226	226
Mean of Cases where loss Incurred	51	79	21	433	449	49	388	2,648	478
Median of Cases where loss Incurred	29	41	26	381	188	34	119	449	120
TOTAL LOSSES *	8,823	9,322	819	33,774	24,695	3,724	79,928	18,536	98,468

\* Rounding errors ignored

C. The Economic Losses Analysed

1. Economic Losses in the Minor Cases (28)

The total losses incurred in the minor injury cases studied were \$98,468. This was made up of \$79,928, present losses and \$18,536. future losses. The present losses included several items of loss. The largest item total was collision loss of \$33,774. There were also incurred income losses of \$24,695., medical costs of \$9,322 and hospital costs of \$8,823. Of the people who suffered minor injuries 20 or 9.7% had no loss at all, 83 or 36.7% lost less than \$50. altogether. There were 36 people or 15.9% between \$50 - \$199., 31 people or 13.7% between \$200. - \$499., 37 people or 16.4% between \$500 - \$999. and 19 people or 8.4% suffering losses over \$1,000. Taking all the heads of loss together the average loss of the 206 who had losses was \$478. but the median was only \$120. The median loss is often the best indication of a typical loss, since it is the amount of the middle loss i.e., an equal number of people lost more and less than the median loss.

Thus, it can be observed that even in the so-called minor cases almost 25% lost over \$500.

(a) Hospital Expenses in Minor Cases

By consulting the table we see that of the 226 people studied with minor injuries, 53 or 23.5% had no hospital expense and that 150 or 66.4% had hospital loss of under \$50. Only 23 or 10.2% had hospital losses of \$50. or over, and only 3 of them had hospital expenses in excess of \$500. The average hospital cost of those who suffered a loss was \$51. and the median was \$29.

(b) Medical Expenses in Minor Cases

Of the 226 people studied, 108 or 47.8% had no medical expense at all. 72 people or 31.9% had expenses of under \$50.00. Only 46 people had medical expenses in excess of \$50. and only 2 of these had expenses exceeding \$500. The average medical cost of those who had a loss was \$79. and the median loss was \$41.

(c) Collision Losses in Minor Cases

This was the largest head of loss in the minor injury cases. There were 148 people who suffered minor injury that had no collision loss at all. These were the pedestrians, passengers and non-owner drivers of motor vehicles. Of those who suffered a loss, there were only 7 people who lost under \$100. and 23 who lost between \$100. - \$299. There were 22 people who lost between \$300. - \$499. and 22 who lost between \$500. - \$999. There were also 4 people who lost over \$1,000. The average collision loss of those who had such loss was \$433. and the median was \$381.

(d) Income Losses in Minor Cases

Most of the minor injury cases had no income loss at all. Of the 226 people studied 171 or 75.7% were in this group. There were 16 people who had less than \$100. income loss, 13 who lost between \$100-\$199 10 who lost between \$200. - \$299., 11 who lost between \$300.- \$999. 5 people had income loss in excess of \$1,000. but less than \$5,000. The average income loss of those with losses was \$449. and the median \$188.

2. Economic Losses in the Serious Cases (29)

The total economic loss incurred in the 307 serious cases studied was \$1,038,581. (30) This amount included \$575,932. present losses and \$462,582. future losses. The largest item of the present losses for these cases was income loss of \$283,330. Also lost were hospital expenses of \$130,896., medical costs of \$82,432., and collision losses of \$56,270.

Of the 307 people who suffered serious injury, all incurred some economic loss. There were 34 or 11.1% who suffered under \$50. Between \$50. and \$199., there were 36 people or 11.8%, between \$200. - \$499., there were 57 people or 18.6%, between \$500. - \$999., there were 56 people or 18.2% and between \$1,000 - \$2,000. there were 56 people or 18.2%. There were 38 people or 12.4% who lost between \$2,000. - \$4,999., 9 people or 2.9% who incurred losses between \$5,000. and \$9999., and 21 or 6.8% who lost over \$10,000.

The average total losses in the serious cases was \$3,383. and the median loss \$736. Of these 307 seriously injured individuals, a majority of 180 or 58.6% incurred total economic losses in excess of \$500.

TABLE III - 3

ECONOMIC LOSSES IN THE SERIOUS CASES

(Number of people in sample with various types of loss according to amount of loss)

Amount of Loss	Hospital	Medical	Drugs	Collision	Income	Other	Total Present Loss	Total Future Loss	Total Economic Loss
Zero	4	51	198	222	162	82	0	276	0
1-49	103	63	87	10	7	129	34	0	34
50-99	27	35	8	1	5	32	13	0	13
100-199	34	63	6	6	24	37	24	1	23
200-299	31	27	3	8	18	11	25	3	23
300-499	34	29	3	13	20	10	31	1	34
500-999	45	25	2	28	19	4	58	5	56
1,000-1,999	17	6	0	16	18	1	56	3	56
2,000-4,999	11	7	0	3	16	1	37	2	38
5,000-9,999	1	1	0	0	11	0	18	5	9
10,000-49,999	0	0	0	0	7	0	11	8	16
50,000+	0	0	0	0	0	0	0	3	5
Total persons With Loss	303	256	109	85	145	225	307	31	307
Total persons in Sample	307	307	307	307	307	307	307	307	307
Mean of cases where Loss Incurred	432	322	51	662	1,954	101	1,876	14,922	3,383
Median of Cases where Loss Incurred	163	147	31	580	484	43	728	5,500	736
TOTAL LOSSES *	130,896	82,432	5,559	56,270	283,330	22,725	575,932	462,582	1,038,581

\* Rounding errors ignored.

(a) The Hospital Losses in Serious Cases

By consulting the table we see that only 4 of the seriously injured had no hospital expenses. There were 103 or 33.6% who had losses under \$50., 61 or 19.9% who lost between \$50. - \$199., 65 or 21.2% between \$200. - \$499, 45 or 14.7% who lost between \$500. - \$999 and 29 or 9.4% who lost over \$1,000.

The average hospital cost, where loss was incurred, was \$432. and the median \$163. These costs are well over double the size of those in the minor cases.

(b) The Medical Losses in Serious Cases

Of the 307 seriously injured persons who were studied, 51 or 16.6% had no medical expense. There were 63 or 20.5% with less than \$50. expense, 98 or 31.9% with loss between \$50. - \$199., 56 or 18.2% with loss between \$200 - \$499., and 39 or 12.7% with losses over \$500.

The average medical expense, where there was such expense, amounted to \$322. and the median expense was \$147. These costs are about four times as high as in the minor cases.

(c) Collision Losses in Serious Cases

There were 222 individuals who were seriously injured who suffered no collision losses. Only 25 of these 85 persons with loss lost under \$300. There were 13 who lost between \$300. - \$499, 28 who lost between \$500, - \$999 and 19 who lost over \$1,000. on collision. The average of those who lost something came to \$662. and the median \$580. It can be seen that by and large the collision losses in the serious cases are higher than in the minor cases.

(d) Present Income Losses in Serious Cases

The loss of income poses a significant problem in the serious cases. There were 162 persons or 52.8% of the sample who suffered no such loss even though seriously injured. These were the housewives, the children and the retired people who did not have employment income. Of those who did suffer income loss only 12 lost under \$100. There were 42 individuals who lost between \$100. - \$299., 20 between \$300 - \$499., 19 between \$500. - \$999, 18 between \$1,000. - \$1,999., 16 between \$2,000. - \$4,999., and 18 who lost over \$5,000. Thus, 71 persons or 49% of the 145 persons who did suffer income loss, suffered in excess of \$500. for this item alone. The average income loss of the seriously injured persons who suffered loss was \$1,954. and the median loss was \$484. This average income loss is more than four times the average loss in the minor cases.

(e) Future Loss in Serious Cases

Of the seriously injured, 276 or 89.9% had no future loss. Of the remaining 31 persons who did suffer future loss, which was predominantly loss of future income, 5 lost less than \$500., 5 lost between \$500. - \$999., 5 lost between \$1,000 - \$4,999., 5 lost between \$5,000. - \$9,999., and 11 lost over \$10,000. Thus, 26 or 83.9% of those who suffered future income loss had losses of more than \$500. Of these 26, there were 11 persons or 35.5% of those suffering future income loss who lost over \$10,000. The average or mean loss, in the cases where there was future loss, was \$14,922., and the median loss was \$5,500. These figures demonstrate the very substantial future

income losses in the serious injury cases. It is in these cases, where wage-earners are disabled for long periods of time or permanently, that the need for some income maintenance plan is most apparent.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED



TABLE III - 4

ECONOMIC LOSSES IN THE FATAL CASES

(Number of people in sample with various types of loss according to amount of loss)

Amount of Loss	Hospital	Medical	Drugs	Collision	Funeral	Income	Other	Total Present Loss	Total Future Loss	Total Economic Loss
Zero	37	37	56	46	0	25	3	0	30	
1-49	10	9	1	1	0	0	27	0	0	
50-99	5	3	0	0	0	0	8	0	0	
100-199	2	1	0	0	0	0	10	0	0	
200-299	1	3	0	0	2	0	3	1	0	
300-499	0	2	0	4	9	1	3	3	0	
500-999	2	1	0	3	25	1	2	12	1	
1,000-1,999	0	1	0	3	19	2	0	10	0	
2,000-4,999	0	0	0	0	2	3	1	5	1	
5,000-9,999	0	0	0	0	0	7	0	7	2	
10,000-49,999	0	0	0	0	0	18	0	19	9	
50,000+	0	0	0	0	0	0	0	0	14	
Total persons with Loss	20	20	1	11	57	32	54	57	27	57
Total persons in Sample	57	57	57	57	57	57	57	57	57	57
Mean of Cases where Loss Incurred	131	192	10	675	876	11,062	160	7,331	51,995	31,960
Median of Cases where Loss Incurred	50	66	10	583	849	14,444	50	3,500	51,786	7,500
TOTAL LOSSES*	2,620	3,840	10	7,425	49,932	353,984	8,640	41,867	1,403,865	1,821,720

\* Rounding errors ignored

3. Economic Losses in the Fatal Cases

As a result of the 57 fatal accidents observed there was incurred economic losses of \$1,821,720. (31) This is made up of \$417,867. present losses and \$1,403,865. future losses. The largest item of present loss here was income loss at \$353,984. The funeral costs incurred were \$49,932., the collision losses \$7,425., medical expenses \$3,840., and hospital costs \$2,620.

All of these 57 cases resulted in some economic loss. In only 4 of these cases or 7%, were the losses less than \$500. There were 12 individuals or 21.1% of all cases with losses between \$500. - \$999., 9 or 15.8% between \$1,000. - \$9,999., 5 or 8.8% between \$2,000. - \$9,999. and 27 or 47.4% with over \$10,000. in losses. The average losses were \$31,960. but the median loss only \$7,500. These figures show that there is a group of fatal cases with great and small losses and another group of cases with very large losses, which depends on the age of the victim and whether he is employed. Actually, in many of the fatal accidents, the burial expense is the major item of loss.

(a) Hospital Losses in Fatal Cases  
of

Most/the persons who die as a result of automobile accident injuries are killed instantly. Thus, 37 or 64.9% of the cases had no hospital costs at all. Only 20 cases or 35.1% of the 57 had any hospital expense. 10 of those cases where loss was incurred were under \$50., 5 were between \$50. - \$99, 3 were between \$100. - \$299., and 2 had losses between \$500. - \$999. The average loss where loss was incurred was \$131. and the median loss was \$50.

(b) Medical Losses in the Fatal Cases

In 37 or 64.9% of the fatal accident cases there were no expenses incurred for medical costs. In the remaining 20 cases or 35.1% there were some losses. 9 cases recorded losses of less than \$50., 3 cases had losses between \$50. - \$90., 4 cases had losses between \$100. - \$299 and 4 had losses between \$300. - \$1,999. The average or mean medical costs, where losses were incurred, was \$192. and the median was \$66.

(c) Collision Losses in Fatal Cases

46 of the persons studied, or 80.7% who were killed, suffered no collision loss. Of the remaining 11 or 19.3%, one lost less than \$50 4 lost between \$300. - \$499., and 3 lost between \$1,000. - \$1,999. The mean or average loss was \$675. and the median was \$583. This indicates that where there is collision damage in a fatal accident it tends to be just slightly higher than in the serious injury cases but substantially higher than in the minor injury cases.

(d) Funeral and Burial Expenses in Fatal Cases

Funeral expense was incurred in every one of the 57 fatal cases. In only two cases did the cost fail to exceed \$300., in 9 cases the cost was between \$300. - \$499., in 25 cases the cost was between \$500. - \$999 and in 21 cases the cost exceeded \$1,000. Thus in only 11 cases or 19.3% was the burial cost less than \$500. and in 46 cases or 80.7% the cost exceeded \$500.

The average or mean burial cost was \$876. and the median \$849. Thus it should be noted that these funeral and burial costs are considerably larger than is generally recognized. (32)

(d) Present Income Loss in the Fatal Cases

In 25 cases or 43.9% of the fatal cases no income losses were incurred. These were the cases involving the housewives, the children and the retired people since only where an individual was employed and was earning income at the time of the fatal injury was any income loss included. Other studies have included income losses for persons who were not employed (e.g. University of Michigan). Since the Osgoode Hall Study has tried to follow the precept of what a court would do with present losses, these losses were not added. In the 32 cases or 56.1% of the cases in which income loss was suffered, these losses were very large. Only 2 were under \$1,000., 5 were between \$1,000. - \$4,999, 7 were between \$5,000- \$9,999 and 18 or 31.6% of all the cases lost \$10,000 and over.

(f) Future Loss in Fatal Cases

There were only 27 cases or 47.4% of the fatal cases studied in which any future loss was recorded. This type of loss in fatal cases is almost exclusively future income loss. None of those who suffered future losses lost under \$500., 1 was between \$500. - \$999., 1 between \$2,000. - \$4,999, 2 between \$5,000. - \$9,999. There were, however, 9 of these or 15.8% of all cases between \$10,000.-\$49,999. and 14 or 24.6% of all cases which had future income loss in excess of \$50,000. The average or mean loss where there was a loss recorded was \$51,995., and the median was \$51,786. These large loss amounts underscore major problems of income maintenance in the fatal cases which involve wage-earners.

# CHAPTER III

## Footnotes

- (1) This terminology was utilized in the University of Michigan Study and adopted by the Osgoode Hall Study. See Conard, Morgan, et al., Automobile Accident Costs and Payments (1964) at p.137.
- (2) The study of the Saskatchewan system by Professor John Adams of Temple University which is now in progress adopted this method. See also Adams, A Survey of the Economic-Financial Consequences of Personal Injuries resulting from Automobile Accidents in the City of Philadelphia, 1953.
- (3) This book is published by the National Automotive Publishers Ltd. in co-operation with the Federation of Automobile Dealer Association of Canada.
- (4) See Lombard v. Philips (1965) 46 D.L.R. 2d 347 (N.S.S.C.) where a claim for the cost of monument was disallowed as not "part of the burial". See Fatal Injuries Act amendment in S.N.S. 1956, c.26, s.1.
- (5) Eckler, Brown & Co., Toronto.
- (6) As was done in the Michigan Study.  
+
- (7) - 2,190,000. These estimates indicate maximum-minimum figures rather than sampling precision. Figures are rounded to nearest thousand.
- (8)  $\pm$  193,000.
- (9)  $\pm$  170,000.
- (10)  $\pm$  317,000.
- (11)  $\pm$  658,000.
- (12) No confidence limits are given for the other expense estimates.

- (13)  $\pm$  1,380,000.
- (14)  $\pm$  1,130,000.
- (15)  $\pm$  1,270,000.
- (16)  $\pm$  172,000
- (17)  $\pm$  154,000
- (18)  $\pm$  313,000
- (19)  $\pm$  532,000
- (20)  $\pm$  86,500
- (21)  $\pm$  70,000
- (22)  $\pm$  46,300
- (23)  $\pm$  283,000
- (24)- No confidence limits given
- (25) - No confidence limits given
- (26) - No confidence limits given
- (27) - 270,000
- (28) See Table III - 2
- (29) See Table III - 3
- (30) There is a slight rounding error in this figure.
- (31) See Table III - 4
- ~~(32) See Table III - 4~~
- (32) See Trustee Act, R.S.O. 1960 which allows a recovery of \$350. and the proposed Ontario scheme which suggests an amount of \$350. for this item.

## CHAPTER IV - TORT RECOVERY

### A. ECONOMIC RECOVERY

The two sources of economic recovery for victims of automobile accidents are "tort recovery" and "non-tort recovery". Tort recovery is any amount extracted from the other person involved in the accident, from his liability insurer or from the Unsatisfied Judgment Fund (1). Institution of a court action is not necessary in order for an injured person to receive tort recovery. If the injured person merely requests compensation from the other person or his insurer, and an amount of money is paid to him without court action, this is still a tort recovery. In calculating the amount of tort recovery, the Osgoode Hall Study included only net tort recovery after deducting legal expenses. For example, Mr. Johnson received \$500 plus \$100 in costs from the other person's insurer in settlement of his claim. His lawyer charged him \$150 including disbursements. This study calculated the net tort recovery as follows:  $\$500 + \$100 - \$150 = \$450$  (2).

"Non-tort recovery" or benefits (3) are those amounts received by the victim from his own insurance, from government welfare programmes or other such sources. One of the major purposes of the study was to measure the effect on compensation of government welfare and private insurance regimes. Care was taken to secure the details of all amounts recovered and their exact source. Included as non-tort sources of recovery are waiver of medical fees, gifts from friends or employers, waiver of ambulance fees, "passenger hazard" recovery and the like.

This chapter deals with tort recovery while chapter VI analyzes non-tort recovery. In chapter VII the combined recovery from both sources is described.

## B. THE TORT SYSTEM OF ONTARIO

### 1. General Theory of Tort Liability for Automobile Accidents

The law of torts plays a significant role in the allocation of losses arising out of automobile accidents. Where a person suffers loss as a result of an automobile accident, he may recover those losses from another person if it can be shown that his loss was caused by that other person's negligence or fault. If the injured person cannot show that the cause of his loss was the other person's negligence, he cannot recover from that other person. Thus, if the accident was caused solely through the fault of the injured person, or if no one was at fault for the accident, the loss will lie where it fell, that is, upon the injured person himself.

It is not easy to determine when the defendant has been guilty of negligence. To do this tort law has adopted an objective standard of the reasonable man rather than the subjective one of moral wrongdoing. The conduct of the defendant is compared to what a mythical reasonable man would have done in similar circumstances. If the defendant's conduct departs from the standard expected of him by the community, he is said to be negligent and must pay for any damage caused to the plaintiff (4).

Thus, if the defendant driver was driving too fast in the circumstances if he was not looking where he was going, if he manoeuvred his automobile in an unsafe way on the highway, if he was drunk while driving, or if he was guilty of dozens of other types of "misconduct" he could be held to be negligent and he would be ordered to pay damages for any loss caused the plaintiff.

## 2. Legislation

### a) Rules of the Road

In Ontario, legislation intrudes in the determination of who must bear the cost of an automobile accident. The Highway Traffic Act (5) contains many provisions which assist the court in assessing the fault. It also contains several other notable provisions which are worthy of examination.

The sections which are most relevant to the negligence issue are the rules of the road (6). If a driver involved in an accident was in breach of one of the rules of the road, he will probably be held to be negligent. The fact that he was in breach of one of the rules of the road is treated by the court as evidence of negligence. Thus, if evidence is adduced that he failed to stop at a stop sign (7), that he failed to give the right-of-way at an intersection (8), or that he failed to signal a turn properly (9), a court will probably find that he was negligent. There are other sections in the Act dealing with the equipment required on vehicles (10). The fact that any of these are breached is important evidence in deciding the fault question. The sections dealing with speed limits (11) are often used as evidence in the determination of the negligence issue. Thus, the legislative regulations which were designed to create a predictable traffic flow are used by the court to crystallize set standards of care in the uncertain world of the reasonable man (12).

### b) Statutory Liability of Owner

Not only is the negligent operator of a motor vehicle responsible to pay damages, but the owner of the motor vehicle is also responsible to make good the loss. In Ontario there is a type of statutory vicarious liability imposed

on an owner of a motor vehicle where loss or damage is sustained by reason of the operation of his motor vehicle on a highway (13). The owner is not responsible, however, where the motor vehicle was in the possession of someone, other than a chauffeur, without the consent of the owner (14). This provision was first enacted in 1930 to act as a crude type of compulsory insurance policy (15). It ensured that owners, who would be more stable financially as a class than drivers, were subject to liability if their automobiles were involved in accidents. The plaintiff would have two potential judgment debtors instead of one. In addition, an owner would be more likely to carry liability insurance than a driver. In any event, it ensured that the vehicle itself would be available for the satisfaction of any judgment awarded against its owner as a result of its operation. It might also act as an additional incentive to the exercise of care by the owner in selecting the people he would allow to use his motor vehicle. The hope may have been that fewer careless or irresponsible drivers would be allowed to drive automobiles by owners who would be held liable for their negligence.

#### c) Statutory Onus Shift

A statutory provision, which is of interest in Ontario, is the "onus section" (16). Normally, the onus of proof in a negligence case rests on the claimant (17). This onus section shifts the onus of proof to the driver or owner of a motor vehicle. Where loss is sustained by reason of a motor vehicle on a highway, the owner or driver must prove that the loss did not arise through the negligence of the owner or driver. It should be noted that this section does not apply in the case of a collision between motor vehicles nor in the case of an action brought by a passenger in a motor vehicle in respect of injury sustained by him as a passenger (18).

This section is an aid to pedestrians and bicyclists primarily. Where a pedestrian or a bicyclist proves that he was injured by a motor vehicle on a highway, the defendant must show that he did not negligently cause the injury (19). Although this section does not make the motorist an insurer of pedestrians (20) it does provide a procedural advantage. "Evidence having been given by the plaintiff to show that her loss or damage was sustained by reason of this motor vehicle on the highway, the onus then rests on the defendant to satisfy the jury that such loss or damage did not arise through the negligence or improper conduct of the owner or driver" (21). Where a motor vehicle collides with real or personal property (22), the owner thereof is entitled to the benefit of the onus section as well.

The onus section is of no assistance to a motorcyclist, on the other hand, since a motorcycle comes within the definition of a "motor vehicle" (23). Thus, in a collision between an automobile and a motorcycle, a motorcyclist plaintiff bears the onus of proving that there was negligence on the part of the motor vehicle operator.

#### d) No Liability to Gratuitous Passengers

Ontario is unique in its treatment of gratuitous passengers; they are deprived completely of a civil action against both their host driver and against the owner of the automobile (25). Unlike the other provinces of Canada and many of the states in the United States, the compromise measure of liability for gross negligence was not adopted (26). The policy reason for this provision is the fear of fraudulent and collusive claims by friends and members of the driver's family. By barring altogether the right of action of gratuitous passengers, the danger of collusion is said to decrease. The action of a passenger against a third person, however, is not removed. Thus, where a

gratuitous passenger is able to show negligence on the part of the other driver he may be able to recover. He is identified with his host, however, in that the negligence of the host is imputed to the passenger. His compensation is cut down in proportion to the fault of his host (27).

Judicial reaction to this section has diminished somewhat the scope of its operation. Several judicial techniques have been created in order to avoid the subsection (28). The courts have construed the words "vehicle operated in the business of carrying passengers for compensation" broadly. Not only are passengers in buses and taxi-cabs entitled to recover but any person who pays a fixed sum of money in return for carriage is entitled to recover from his host (29). This is so, even where the amount of money is paid on only one occasion (30) and even where the money is paid by a passenger other than the claimant (31).

Another significant advance is that a driver or owner may be liable where there is a clause requiring safe carriage in a contract of employment. The earlier cases had required that the compensation be paid directly to the carrier in return for carriage alone in order to allow recovery (31). This requirement has been widened so that there may be an express or implied term providing for safe carriage in a contract of employment (32) and, presumably, in other types of contract as well.

There are several other devices available to assist the court in avoiding the application of s.105(2). Where there is a relationship between of master and servant the plaintiff and the owner of the vehicle, the plaintiff, if he is in the course of his employment, may recover (33). This is so even where the master is himself his driving the automobile (34). There is still considerable doubt as to whether master is liable to any passenger where the motor vehicle is being driven by one servants. It has been argued that there is vicarious liability for the negligence

of a servant in these circumstances to a third person (35).

Just recently, another exception has been added to this long list of exceptions. Where a passenger is an employee of the defendant and a "workman" and he is injured as a result of the negligence of a fellow servant during the course of the latter's employment, the passenger may recover (36). This theory rests on a literal reading of section 124 of the Workmen's Compensation Act (37). It may be that other exceptions will develop in the future.

This subsection is worthy of this rather full treatment because of the large numbers of passengers involved in accidents.

Of the 37,146 people injured in Ontario in 1961, 15,291 or 41.2% were passengers, and of the 1,268 people killed, 392 or 30.9% were passengers (38). It can be seen that the plight of the gratuitous passenger is an important question to consider. This is especially so, since only about 5% of the passengers studied could claim to be anything other than gratuitous passengers. The Law Society in its brief to the Select Committee on Automobile Insurance recommended the abolition of this section. However, the Select Committee did not recommend any legislation to abolish or amend this provision.

#### e) Contributory Negligence

At common law, if the negligence of the plaintiff as well as the negligence of the defendant contributed to the accident, the plaintiff was deprived of his action (39). This was so even where the plaintiff's negligence was slight as compared to the negligence of the defendant. This is still the position in the great majority of American jurisdictions (40). The common law judges created the device of "last clear chance" in order to assist a plaintiff in some situations (41). However, this technique was too limited in scope to assist in very many cases. Thus, most of the Commonwealth jurisdictions enacted

legislation to overcome the harshness of the common law and to give some relief to the negligent plaintiff.

In 1924, Ontario passed the first Canadian statute which allowed for the comparison of the negligence of the plaintiff and the defendant (42). This statute has been amended and modified and now is called the Negligence Act (43). The purpose of this legislation was to give a plaintiff some recovery where he was guilty of contributory negligence, instead of permitting his contributory negligence to be a complete bar to his recovery. Where the negligence of both parties to the action contributes to an accident, the court now apportions the damages in proportion to the degree of fault or negligence found against the parties respectively (44). Thus, if it is found that the plaintiff was 25% to blame for the accident and that the defendant was 75% to blame, the plaintiff is allowed to recover 75% of his assessed damages. The court has the power to divide the costs awarded as well (45) although this is seldom done in practice.

Where the court has found that the negligence of both parties has contributed to the accident, but is unable to determine the respective degree of fault, the parties are deemed to be equally at fault (46). Where there is a complete absence of evidence of negligence on the part of either party, however, there can be no apportionment (47). So too, there is no apportionment where there is evidence that one or other of the parties was negligent (48). But, if the accident occurs in circumstances where an inference may be drawn that both parties were probably negligent, the court may apportion the fault equally (49). The effect of this is that both parties receive one-half of their damages and at least some costs from the other parties' insurer since there is normally no set-off.

Strangely enough, the doctrine of last clear chance has survived the passage of this legislation. A doctrine that was created in order to avoid the

harshness of the common law rule and to assist the plaintiff to recover in certain cases, is now used occasionally against the plaintiff. Where it is found that the plaintiff had the last clear chance of avoiding the accident he may be deprived completely of recovery (50). Of course it may still be used as well to give the plaintiff 100% recovery (51). The trend, however, appears to be toward split liability in these cases (52).

Contributory negligence may be imputed to a plaintiff even though he, personally, was not guilty of negligence. For example, a gratuitous passenger who sues the other driver will have his damages cut down by the degree of contributory fault of his host driver (53). Contributory negligence of a wife is imputed to the husband where an action is brought by the husband in connection with loss to the wife (54). Contributory negligence of other classes of people may be imputed as well (55).

Where a plaintiff suffers loss due to the joint negligence of two or more other people, he may recover all of his damages against either of these other persons. Each of the tortfeasors, however, is entitled to contribution or indemnity over against the other one. The court must apportion the degree of fault as between the two defendants (56). The complexities that may arise where three people or more, including the plaintiff are all negligent, are better left to other works (57).

### 3. The Forum for Fault Determination

The forum for the determination of automobile accident disputes in Ontario is primarily a judge with a jury of six members. The judge supervises the court proceedings, admits or rejects evidence, charges the jury on the law, and submits questions for the jury to answer (58). The jury listens to the evidence, the addresses of counsel, the charge of the judge and then answers the questions asked. A majority of five out of six is required for an effective answer



to each question posed. (59) The jury is asked whether the defendant was negligent and the particulars thereof (60) and whether the plaintiff was contributorily negligent and the particulars thereof. Where both the plaintiff and defendant are negligent the jury will decide the percentage of the blame of each party (61). Where the degree of fault cannot be agreed upon, the fault is deemed to be equal and the jury will so find (62). The jury also assesses the damages.

If there is no jury or where the jury is lost during the course of trial (63), the judge will normally decide the case himself. An appeal is available to the Ontario Court of Appeal as of right (64). The Court of Appeal will not lightly interfere with a jury verdict where there is any evidence upon which it was able to base a decision (65). A further appeal to the Supreme Court of Canada is available as of right in cases involving over \$10,000 (66) and by leave in other cases (67). Only rarely are there appeals filed in motor vehicle cases.

#### 4. The Role of Liability Insurance

In theory, when a judgment is awarded against the defendant, he is supposed to pay it personally. The effect of this is not only to compensate the plaintiff but to punish the defendant and to deter him and others from further wrongdoing. In practice, in Ontario today, almost all of these judgments against negligent drivers are paid by insurance companies. Approximately 98% of all motor vehicles in Ontario are now covered by liability insurance (68). The minimum limits allowed are \$35,000 inclusive (69) but many people insure to much larger limits.

Insurance is not compulsory in Ontario. In practice, however, the effect achieved is the same as if it were compulsory. Although one need not insure himself, in order to secure a motor vehicle licence the uninsured owner

must pay a \$20 "uninsured motor vehicle fee" (70). This payment does not provide any insurance protection to the owner or driver, but it does assist anyone injured by such owner or driver. A third person may claim against the Motor Vehicle Accident Claims Fund where he is injured by an uninsured driver (71). The Fund will defend the action and pay any damages awarded against the uninsured defendant. However, the Fund is entitled to reimbursement from the defendant (72).

If a driver is unable to secure liability insurance for himself he may apply to the Ontario Automobile Assigned Risk Plan (73). This plan has been set up by the insurance companies themselves to provide coverage to people who are considered poor risks. Assignments are made on a rotation basis with regard to the annual premium collected by each company. An applicant may be rejected for several reasons. If he has been guilty of more than one Highway Traffic Act offence arising out of an accident, careless driving or any criminal offence he will be refused coverage. The premium is very high and can be made even higher for certain specified reasons.

As a result of these provisions, most defendants carry liability insurance in Ontario. The result of this will be that most claims will involve insurance companies and adjusters on both sides. Where liability is established there will rarely be any difficulty in collecting the award.

#### 5. The Motor Vehicle Accident Claims Fund

There are a very few people who are not covered by liability insurance. To fill this gap there has been established the Motor Vehicle Accident Claims Fund. This fund is available whenever someone is injured by an uninsured driver (74) or by an unidentified driver (75). The claimant is now no worse off than if the defendant had been insured, except if his claim is valued at more than \$35,000 (76)

and except for a \$50 deductible feature (77).

When an application for payment is made to the Fund, it will take appropriate steps to notify the defendant (78). No amount will be paid if the judgment secured was by default, unless the Fund has consented thereto (79) and has secured an assignment of the judgment (80). The licence of the defendant is then suspended until he has either paid the amount back to the Fund or until certain other arrangements have been made (81).

The Fund now operates very much like a private insurance company in the way it processes claims: a claim may be made by the injured individual in person and adjusters may assist in assessing the damages and the liability. If settlements are not arrived at, outside counsel are hired to defend the claims. Thus, uninsured defendants in Ontario seldom create any additional problems of compensation for their victims.

### C. INCIDENCE OF TORT RECOVERY

#### 1. Number of Individuals Receiving Some Tort Recovery

There were a significant number of money recoveries from the other person or his insurer by the 11,870 people injured in the County of York in 1961. Some tort recovery was achieved by 5,096 (82) of these people or by 42.9% (83) of all the people injured. This, of course, means that the remaining 6,774 (84) or 57.1% (85) received not one cent via the tort route from the other person, his insurer nor from the Unsatisfied Judgment Fund (86). Table IV-1 depicts the number of individuals in the universe who received something by way of tort recovery, regardless of whether they suffered any economic loss.

When one examines Table IV-1 closely one sees that there is a slightly different pattern of recovery depending on the class of injury. In the minor cases 4,469 (87) of the 10,413 people who received minor injuries in the period or 42.9% (88) received something by way of tort recovery. In the serious cases, a slightly higher number received some tort recovery. Of the 1,283 individuals injured seriously 560 (89) or 43.6% (90) secured some tort compensation. In the fatality cases, there was a substantially lower incidence of recovery. Of the 174 fatal injuries, there was tort recovery in only 67 cases (91) or 38.6% of all the fatality cases.

As a corollary of these findings there were 5,944 people or 57.1% of those receiving minor injuries who received nothing at all from tort sources, 723 people or 56.4% of the seriously injured who secured nothing from tort sources and 107 or 61.4% of the fatal injury cases which went without any tort compensation whatsoever.

It must also be recalled that these figures do not reflect any recovery which may have been received from the victims own insurance company or from govern-

TABLE IV - 1

INDIVIDUALS RECEIVING SOME TORT RECOVERY

(Numbers in universe and percentage of total injured persons according to type of injury)

Type of Injury	Number in universe	Some Tort Recovery		No Tort Recovery	
		Number	%	Number	%
Minor	10,413	4,469	42.9	5,944	57.1
Serious	1,283	560	43.6	723	56.4
Fatal	174	67	38.6	107	61.4
TOTAL	11,870	5,096	42.9	6,774	57.1

ment welfare plans. Nor do they on the other hand mean that those who do receive something are compensated fully or nearly so. Many of the injured people secure something from the other side which does not compensate them in full for their economic losses. Thus, it can be concluded that if the injured people were reliant upon tort compensation alone, a substantial majority would go without any such compensation.

2. Comparisons

Some comparison of the tort recovery patterns was done. Since this study drew primarily from city accidents it was thought necessary to compare the picture outside of Metropolitan Toronto with the situation in Metropolitan Toronto itself. Another comparison that was done was to compare the recovery patterns according to the total economic loss suffered. The third comparison was done in order to measure the effect of the gratuitous passenger legislation and the onus section which assists pedestrians.

a) Residence of Injured Person

Of the people studied who lived in Metro Toronto and who were injured 43.3% received some tort recovery and 56.7% received no tort recovery. Only 32.3% of those who resided outside of Metro Toronto recovered something from the other person and 67.7% recovered nothing. Thus, it appears that those persons who resided in Metro Toronto were more likely to recover than those who resided outside of Toronto. Part of the explanation for this is, of course, that fewer people outside of Metropolitan Toronto made a claim (93). In addition, distances are greater and adjustment facilities are not as accessible. It may be that the lawyers consulted outside of Toronto were not as skilled as the highly specialized Toronto negligence bar.

Looking at the minor injuries alone, 43.7% in Metro Toronto had recovery and 56.3% did not, whereas outside of Toronto only 35% had any tort recovery, with

65% securing no tort recovery. In the serious cases, 44% of those injured in Toronto secured some tort compensation whereas only 30.9% of those outside Metro Toronto secured any tort compensation. In the fatal injury cases, the picture is rather similar. Of those fatally injured, 35.9% in Toronto had some tort recovery whereas only 33.3% outside of Toronto got any tort recovery. In conclusion, these figures indicate a slightly higher incidence of tort recovery in Metropolitan Toronto than outside of Metro.

#### b) Amount of Loss

The incidence of recovery appeared to vary somewhat according to the total amount of economic loss suffered by the injured person. Of those who had total economic losses between \$1-49, only 20.5% recovered anything from tort sources. Where the losses were between \$50-99, 44.8% had some tort recovery; between \$100-199, 65.1% had some tort recovery; between \$200-299, 36.1% recovered; between \$300-499, 44.6% recovered; between \$500-999, 54.3% recovered; between \$1,000-1,999, 48.1% recovered; between \$2,000-4,999, 50% recovered and above \$5,000 there were 38.1% who recovered something from tort sources.

Thus, only about 1/5 of those with tiny losses had any tort recovery. The percentage of those who recovered exceeded 40% in all other groups except two, where tort recovery was secured in slightly less than 40% of the injury cases.

It should not be forgotten that the majority of these people had no tort recovery at all. Only in two of these groups did more people recover than did not recover. Thus, although a sizeable number of people are securing some compensation there are large numbers that are not receiving any tort compensation at all. Significantly, of those who lost over \$5,000 more than 60% went without any tort recovery.

#### c) Category of Victim

There was a marked difference in the tort recovery rate according to the category of the victim. Of the drivers studied who were injured 38.8%

received something from tort sources. Of the pedestrians, 53.7% recovered and of the cyclists 36% received something. Of the gratuitous passengers only 33.7% were able to secure some tort recovery. Of the non-gratuitous passengers 37.5% recovered. Thus, even the drivers, who are often partially to blame themselves for the accident, seem to fare better than the gratuitous passengers. The pedestrians had the highest percentage of recovery.

Table IV-2 illustrates the incidence of tort recovery according to category of victim. Looking at the different classes of injuries, we see that the families of 11 out of 12 or 91.7% of gratuitous passengers studied who were killed received nothing at all from tort recovery. Of the seriously injured gratuitous passengers, 68.6% secured no tort recovery and 60.5% of the gratuitous passengers with minor injuries received no tort compensation. Receiving some tort recovery were 8.3% of the fatal cases, 31.4% of the serious cases and 39.5% of the minor cases. Thus, the gratuitous passengers recovered in only a small portion of the cases in which they were injured. Strangely enough, they appear to be less likely to recover in the more serious cases than in the less serious cases.

The drivers who are injured are more likely to secure some tort recovery than the gratuitous passengers. In the minor cases 49.5% of the drivers recovered something, in the serious ones 31.8% of them recovered, and in the fatal cases only 17.6% of the drivers secured any compensation. No tort compensation at all was secured by the drivers in 50.5% of the minor cases, 68.2% of the serious cases and in 82.4% of the fatality cases. Thus, the drivers recovered less often as the severity of injury increased but they did better than the passengers in each class of injury.

The pedestrians, on the other hand, had a higher incidence of recovery

in the serious injury cases. Pedestrians recovered in 35.1% of the minor cases,

in 58.9% of the serious injury cases and in 57.7% of the fatal cases. Pedestrians failed to recover anything in 64.9% of the minor cases, 41.1% of the serious ones and in 42.3% of the fatal cases. These figures demonstrate quite conclusively that the gratuitous passengers are being poorly compensated even when they are compared to the drivers themselves. They indicate also that the pedestrian is compensated better than the other classes of victim.

TABLE IV - 2

INCIDENCE OF TORT RECOVERY ACCORDING TO CATEGORY OF VICTIM

(Percentage of figures of sample  
according to type of injury)

Type of Injury	Some Recovery			No Recovery		
	Grat. Pass.	Driver	Pedn.	Grat. Pass.	Driver	Pedn.
Minor	39.5%	49.5%	35.1%	60.5%	50.5%	64.9%
Serious	31.4%	31.8%	58.9%	68.6%	68.2%	41.1%
Fatal	8.3%	17.6%	57.7%	91.7%	82.4%	42.3%

D. THE AMOUNT OF TORT RECOVERY

Collectively the people injured received from all tort sources about \$5,355,000 or 37.2% of all their collective losses. This appears like a great deal of money. A better understanding of the tort recovery pattern will be achieved, however, by examining the average amount of individual recoveries.

1. Average Tort Recovery

a) According to Type of Injury

The average recovery of those people who did recover something from a tort source was \$729 in the minor cases and the median recovery was \$350. In the serious cases the average tort recovery was \$3,599 and the median recovery was \$1,678. In the fatal cases the average tort recovery was \$1,792 while the median was \$968. Thus, the seriously injured receive the largest average tort payments, the fatal the next largest and the minor the smallest. It must be kept in mind that these figures reflect only the average recoveries and do not demonstrate how any particular individual was treated. It must also be recalled that the recipients of tort recovery are only a minority of the people injured. There were 57.1% of all the people injured who receive no tort compensation at all.

b) According to the Income of Chief Supporter

An analysis was made to see whether the economic status of an injured person affected the amount of his tort recovery. It is difficult to assess whether this factor had an effect on the tort recovery amounts. However, it does appear that those in the higher income brackets did receive somewhat larger amounts of tort compensation (94). Table IV-3 depicts graphically the results of this analysis.

The average tort recovery in all the injury cases of those who did recover and of those whose chief supporter earned under \$3,000 per annum was

TABLE VI-3

Comparison of Average Tort Recovery According  
to the Income of Chief Supporter  
(All cases in the sample taken together)

Annual Income \$	Average Amount of Tort Recovery \$
Under 3,000	1660
3 - 5,000	2934
5 - 7,000	3642
7 - 10,000	4641
10,000 +	3435

\$1,660 (95). Where the income of the chief supporter was between \$3,000 - \$5,000 per annum the average tort recovery rose to \$2,934; where the annual income was between \$5,000 - \$7,000 the average recovery rose again to \$3,642; where the annual income was between \$7,000 - \$10,000 the average recovery climbed to \$4,641 and where the income of the chief supporter exceeded \$10,000 the average recovery fell off slightly to \$3,435.

may tend to

These figures indicate several things in addition to the obvious fact that those with higher incomes recover higher awards. Since those who earn a higher salary lose more money when they are out of work, their losses are normally higher. Thus, one would expect that the recoveries of the people in these categories would be higher. Another factor is that those who earn over \$7,000 per year are more likely to claim (96). There may be a greater likelihood that lawyers will be retained to pursue the claims of those in higher income brackets. A higher recovery is likely where a lawyer is used by the claimant (97). These factors may contribute in some degree to the higher average tort recoveries secured by those in the higher economic brackets. Nevertheless, the fact remains that there is a higher average tort recovery in the cases involving people in higher income brackets.

#### c) According to the Source of Recovery

Tort recovery may be received from one or more of three different sources. It may be recovered from the other person himself, from the insurer's company of the other person or from the Unsatisfied Judgment Fund.

The vast majority of people who received tort recovery, did so at the expense of the other persons' private insurance companies. Of those with some tort recovery from a known source, 90% received recovery from the other person's insurer. There were 7.4% of these people who dipped into the Unsatisfied Judgment Fund for payment. In only 2.6% of the cases did the other person pay anything personally (98).

The average tort recovery from these sources appears to differ somewhat. Whereas the average recovery from the other person's insurer was \$2,331, the average received from the other person was only \$856 and from the Fund it was \$3,229. The fact that the average received from the other person's insurance company is less than the average from the Fund should be explained. There were a large number of people (99) who settled their claim with the other person's insurer without the assistance of a lawyer. The average settlement in those cases was only \$424. In the cases which were settled with the aid of a lawyer (100) there was an average yield of \$3,353. There were no cases settled with the Fund without the aid of a lawyer in the sample. Thus, the absence of a lawyer in a substantial number of cases against the other person's insurer may partially explain the lower average recoveries. Another explanation may be that individuals are not likely to commence proceedings against the Fund unless their losses are substantial. These same individuals do not have the same reluctance when they are able to secure compensation easily from an insurance company.

#### 2. Individuals with Various Amounts of Tort Recovery

The individuals who manage to secure tort compensation do not secure very large amounts of money normally. On the contrary, most of the people who recovered appeared to have received rather small amounts. Table IV-4 depicts the number of individuals who received various amounts of tort recovery and the percentages of the total in each category of injury (101). It should be recalled that "tort recovery" here includes total tort recovery from all sources minus the cost of securing that recovery. For example, A received from the defendant's insurer \$1,000 plus \$100 legal costs in settlement of his claims. A's lawyer charged him a \$150 fee and there were \$50 in disbursements. The tort recovery is fixed at \$900 calculated as follows:  $(\$1,000 + \$100) - (\$150 + \$50) = \$900$ . Of the people who did receive tort recovery in the minor cases 25.8% received less than \$100, 20.6% between \$100 - 299, 14.4% between \$300 - 499,

**TABLE IV-4**  
**Individuals with Various Amounts of Tort Recovery**  
**(Number in sample and percentage of total in each**  
**category of injury)**

Amount of Tort Recovery																		
Type of Injury	Under 100		100-299		300-499		500-999		1000-1999		2000-4999		5000-9999		10000-49999		TOTALS	
	No. in sample	%	No. in sample	%	No. in sample	%	No. in sample	%	No. in sample	%	No. in sample	%	No. in sample	%	No. in sample	%	No. in sample	%
Minor	25	25.8	20	20.6	14	14.4	16	16.5	13	13.4	6	6.2	3	3.1	0	0.0	97	100
Serious	7	5.3	13	9.8	5	3.8	22	16.7	28	21.2	29	22.0	15	11.4	13	9.8	132	100
Fatal	1	4.8	0	0.0	2	9.5	8	38.1	6	28.6	2	9.5	2	9.5	0	0.0	21	100

16.5% between \$500 - 999, 13.4% between \$1,000 - 1,999 and 9.3% received more than \$2,000. Thus, of those with minor injuries who recovered something 60.8% received less than \$500 and only 39.2% recovered more than \$500.

In the serious cases there were more people with larger recoveries. Only 5.3% of these people received less than \$100, 9.8% between \$100 - 299, 3.8% between \$300 - 499, 16.7% between \$500 - 999, 21.2% between \$1,000 - 1,999, 22% between \$2,000 - 4,999, 11.4% between \$5,000 - 9,999 and 9.8% between \$10,000 and \$49,999. Thus, of the seriously injured with tort recovery 18.9% received less than \$500 and 81.1% received more than \$500. Only 21.2% however, received more than \$5,000 and only 9.8% received more than \$10,000.

In the fatal cases there were 13.3% who received less than \$500, 38.1% received between \$500 - 999, 28.6% between \$1,000 - 1,999, 9.5% between \$2,000 - 4,999 and 9.5% between \$5,000 - 9,999. No one in the sample received more than \$10,000 in a fatal case, despite the fact that in the fatal cases the economic losses exceeded \$10,000 in 27 cases (102).

Thus, it can be concluded that the vast majority of tort settlements are moderately small amounts. Only a very few settlements exceed \$5,000. These occur only in a few fatal cases and in a few of the serious disability cases.

### 3. Tort Recovery Amounts Compared to Amounts of Economic Losses

In order to assess the efficacy of the tort system it was helpful to compare the amount of economic losses suffered by individuals with amounts of their tort recovery. Table IV-6 will soon attempt to do this by means of tort recovery ratios. Table IV-5 attempts to do this in another way (103).

There were 278 people in the sample who suffered economic loss of \$1 - 499. Of these, 62.6% recovered nothing from tort sources, 23.7% recovered between \$1 - 499, 6.8% recovered between \$500 - 999, 4.7% recovered between \$1,000 - 1,999, and 2.2% recovered between \$2,000 - 4,999. Thus, 13.7% of those



people who lost \$1 - 499 were in a category which recovered more than was lost.

Turning to the 105 people in the sample who recorded economic losses of between \$500 - 999, 45.7% received nothing, 10.5% received between \$1 - 499, 16.2% received between \$500 - 999, 21.0% received between \$1,000 - 1,999, and 6.7% between \$2,000 - 4,999. Thus, 27.7% were in a category which recovered more than was lost.

Of the 76 people who lost between \$1,000 - 1,999, 52.6% received nothing from tort sources, 5.3% received between \$1 - 499, 6.6% received between \$500 - 999, 13.2% between \$1,000 - 1,999, 19.8% received between \$2,000 - 4,999 and 2.6% between \$5,000 - 9,999. Thus, 22.4% of these people were in a category which received more than was lost.

Of the 38 people who lost between \$2,000 - 4,999, 57.9% received no tort recovery, 2.6% received between \$1 - 499, 2.6% received between \$500 - 999, 2.6% received between \$1,000 - 1,999, 15.8% received between \$2,000 - 4,999, 28.9% recovered between \$5,000 - 9,999 and 5.3% received over \$10,000. Thus, there were 34.2% of the people who suffered losses between \$2,000 - 4,999 who were in a category which recovered more than was lost.

Of the 14 people who lost between \$5,000 - 9,999, 57.1% got nothing, 7.1% got between \$2,000 - 4,999, 21.4% got between \$5,000 - 9,999 and 14.3% got over \$10,000. Thus, only in this last group of 14.3% did the people receive more than the losses suffered.

There were 50 people with recorded losses over \$10,000. Of them, 62% received no tort recovery, 22% of them were in the various recovery categories less than \$10,000, and only 16% were in the \$10,000 or more recovery category (104).

One might conclude that, except for the small cases, as the losses increase the likelihood of there being no tort recovery appears to increase.

TABLE IV-5  
Tort Recovery Amounts Compared to Amount of  
Economic Loss  
(Number in sample with various amounts of tort  
recovery and percentage of number in each category  
of loss)

Amount of Loss	No Tort Recovery		Amount of Tort Recovery										Total with known loss and known Tort Recovery	
			1 - 499		500 - 999		1000-1999		2000-4999		5000-9999		\$10,000 +	
			Number	%	Number	%	Number	%	Number	%	Number	%	Number	%
\$1 - 499	174	62.6	66	23.7	19	6.8	13	4.7	6	2.2	0	-	0	-
\$500 -999	48	45.7	11	10.5	17	16.2	22	21.0	7	6.7	0	-	0	-
\$1000-1999	40	52.6	4	5.3	5	6.6	10	13.2	15	19.8	2	2.6	0	-
\$2000-4999	22	57.1	1	2.6	1	2.6	1	2.6	6	15.8	11	28.9	2	5.3
\$5000-9999	8	57.1	0	-	0	-	0	-	1	7.1	3	21.4	2	14.3
\$10,000 +	31	62.0	1	2.0	2	4.0	1	2.0	3	6.0	4	8.0	8	16.0

Of the smaller cases with less than \$500 losses, there are fewer people with some tort recovery. This is so, perhaps, because their incentive to claim is not great. Where the people with small losses do recover, their recovery is more inclined to fall into the same category of recovery into which their losses fall. In the middle three categories of loss, the number of people recovering more than they lost is largest. In the two groups of cases with the highest losses there were fewer people who derived from tort sources more than they lost. Thus, many of the people with the largest losses are not being compensated by the tort system. At the same time, there are a fair number of people who appear to be over-compensated for their economic losses by tort law.

#### E. TORT RECOVERY RATIOS

It has been stated above (105) that 42.9% of all the people injured had some tort recovery. This statement may be somewhat misleading. "Some recovery" may consist of a mere token payment. It may consist of a payment toward hospital bills, medical expenses or the like. A more meaningful analysis could be made by comparing the amounts which various individuals lost with the amounts which they received from tort sources. One way of doing this is to examine the "tort recovery ratios". The ratio of tort recovery is the amount of tort compensation received over the total economic losses. Thus, if A lost \$100 as a result of his accident and received a \$50 payment from the other person or his insurer, he had a tort recovery ratio of 50/100 or .5. This ratio can be expressed in terms of percentages as follows: 50% of the economic loss was recovered. Table IV-6 demonstrates the tort recovery ratios of the people in the universe who had known losses and known tort recoveries (106).

Of all the 10,948 people who were injured in the County of York in 1961 and who suffered some economic loss, 4,992 (107) or 45.6% (108) received something from the other person, his insurer or the Unsatisfied Judgment Fund. This means that 5,956 (109) of these people or 54.4% (110) of them received nothing by way of tort compensation. All of the people who received something did not recover their full economic losses. Only 3,148 people (111) or 28.8% of the universe recovered 100% or more of their economic losses from tort sources. This left 844 people or 7.7% of the universe who received something amounting to less than one-half of their losses and 1,000 people or 9.1% of the universe who received more than one-half of their losses but less than full compensation. Thus, if tort sources alone were relied upon, 7,800 or 72.2% (112) of the people with economic losses received less than full compensation from tort sources. On the other hand, only 3,148 or 28.8% of those injured, who suffered economic losses, recovered in full from tort sources. Looking at these figures another

TABLE IV-6

Tort Recovery Ratios in Cases where Some Economic Losses Incurred  
(Numbers of people in the universe and percentage figures according to type of injury)

	People with losses		People with no Tort Recovery		People with Tort Recovery 1-49%		People with Tort Recovery 50-99%		People with Tort Recovery 100%+		People with some Tort Recovery	
	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%
Minor	9491	100	5114	53.9	737	7.8	875	9.2	2765	29.1	4377	46.1
Serious	1283	100	732	57.0	92	7.2	104	8.1	355	27.7	551	43.0
Fatal	174	100	110	63.2	15	8.6	21	12.1	28	16.1	64	36.8
All Cases	10948	100	5956	54.4	844	7.7	1000	9.1	3148	28.8	4992	45.6

way, we see that of the 4,992 people or 45.6% of the injured people who did receive some tort recovery, only 3,148 of them or 28.8% of the total received recovery in full while 1,844 of them, or 16.8% of the total received something less than full recovery. Of the people who recovered some tort compensation 63.1% recovered in full whereas 36.9% recovered only part of their losses. These figures indicate that the present tort system does not provide full economic compensation for people injured in automobile accidents. It also demonstrates that many of those who do recover receive only a portion of their losses.

#### 1. According to Type of Injury

This picture becomes more dismal when one examines the tort recovery ratios in relation to the type of injury. In the 9,491 minor injury cases in which loss was incurred 5,114 (113) or 53.9% (114) received no tort recovery, 737 (115) or 7.8% (116) received something less than 50% of the loss, 875 (117) or 9.2% (118) received something more than 50% but less than full recovery and 2,765 (119) or 29.1% (120) received 100% or better. Thus, in the minor injury cases 6,726 or 70.9% received less than full compensation and only 2,765 people or 29.1% were fully compensated by tort sources.

In the 1,283 serious cases, 732 (121) or 57.0% (122) received no tort recovery, 92 (123) or 7.2% (124) received something less than 50% of the loss, 104 (125) or 8.1% (126) received over 50% of their loss but less than full compensation and 355 (127) or 27.7% (128) received what they lost or more. Thus, 928 people or 72.3% of the seriously injured were not fully compensated and only 355 people or 27.7% were fully recompensed by tort sources.

In the 174 fatality cases, the tort recovery ratios reveal an even bleaker picture. No tort recovery was received in 110 (129) or 63.2% (130) of these cases, 15 (131) people or 8.6% (132) recovered something less than

5% of their losses and 21 (133) or 12.1% (134) recovered something between 50% and 99% of their losses. In only 28 (135) cases or 16.1% (136) of the fatal cases was there full recovery or better. Therefore, of the 174 fatal cases 146 or 83% received less than full recovery from tort sources and only 28 or 16.1% were fully reimbursed for their economic losses.

In conclusion, the tort system fails to provide anywhere near full economic recovery for all of those suffering loss. The tort system <sup>appears</sup> to operate best in the minor injury cases, worse in the serious cases and worst of all in the fatal cases. Thus, where full compensation is most needed it is least likely to be forthcoming.

## 2. According to Income of Chief Supporter

A comparison was made of the tort recovery ratios of the injured people according to the annual income of their chief supporter. Table IV-7 indicates that there is a much larger incidence of people with no recovery in the lower income brackets. For example, no tort recovery at all was received by 54.8% of those whose chief supporter earned less than \$3,000 per annum, by 61.6% of those whose chief supporter earned between \$3,000 - 5,000 annually, and by 52.6% of those whose chief supporter earned between \$5,000 - 7,000 per annum. On the other hand, where the annual income of the chief supporter was between \$7,000 - 10,000 only 29.4% received nothing and where the annual income exceeded \$10,000 only 31.3% received nothing.

Looking at the other end of the spectrum it can be readily seen that those in the smaller income brackets are less likely to receive more than

TABLE IV-7  
Comparison of Tort Recovery Ratio According to  
Income of Chief Supporter  
(Number of people in sample and percentage of  
total in each income category)

Annual Income	No Loss No Recov.		Loss No Recov.		1% - 49%		50 - 99%		100 - 200%		200% +		Totals	
	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%
Under 3000	14	3.9	199	54.8	27	7.4	28	7.7	38	10.5	57	15.7	363	100
3 - 5,000	4	3.0	83	61.6	6	4.4	13	9.6	18	13.3	11	8.1	135	100
5 - 7,000	2	3.5	30	52.6	7	12.3	5	8.8	9	15.8	4	7.0	57	100
7 - 10,000	0	0	5	29.4	2	11.8	3	17.6	2	11.8	5	29.4	17	100
Over 10,000	0	0	5	31.3	1	6.3	1	6.2	8	50.0	1	6.2	16	100

their actual economic losses. In other words, compensation for pain and suffering is less likely to be forthcoming in the lower economic groups. There were 26.2% of those in the under \$3,000 category who received more than they lost, 21.4% of those in the \$3,000 - 5,000 group, 22.8% in the \$5,000 - 7,000 group. In the group where the chief supporters earned between \$7,000 - 10,000, 41.2% received more than they lost and in the over \$10,000 group 56.2% received more than their money losses.

These figures may reflect many things. The people in the higher salary brackets are more likely to claim, more likely to retain lawyers, more likely to be prepared to litigate, and they are more likely to make effective, articulate witnesses. The tort recovery ratio figures indicate that, because of these reasons and others, those in the higher income groups appear to be treated better by the tort system than those in the lower income groups.

### 3. According to Presence of Lawyer

Where a lawyer participates in the settlement of a tort claim, the claimant appears to receive a larger tort recovery ratio. In other words, if someone hires a lawyer, he is more likely to secure compensation for his losses in full and perhaps even something extra for pain and suffering. Where he processes his claim without the aid of a lawyer he is less likely to receive full compensation or better. In the cases in the sample in which a lawyer was hired, only 29.9% of those who received something from tort sources received less than full economic compensation. There were 33.0% of these people who secured between 100% - 200% of their losses and 37.2% who recovered more than 200% of their losses. Thus, 70.2% of the people who retained lawyers recovered their economic losses in full and also received some compensation for their pain and suffering.

In the cases in which no lawyer was retained, 53.6% of those who received something by way of tort compensation, received less than their full

economic losses. Only 26.2% of those people without lawyers received between 100% and 200% of their money losses and only 20.2% received more than 200% of their losses. Thus, only 46.4% of those without lawyers, who did have some tort recovery received more than full compensation. No analysis was done of the people who did not secure any tort recovery at all for this purpose.

## F. GENERAL DAMAGES

The law of torts attempts to compensate more than mere economic losses. It provides for compensation for pain and suffering, loss of enjoyment of life, mental suffering, future loss of wages and other similar items. This compensation is called general damages. These general damages are paid in addition to the special damages which are made up of the out-of-pocket expenses suffered. The amount of general damages is normally assessed by a jury, if the matter comes to trial. But, as will be seen, only a tiny portion of the injury cases ever go to trial. Nevertheless, in the settlement of tort cases this head of general damages is taken into account by insurance adjusters, claimants and their lawyers. As a result of this, some individuals may receive more money compensation than they have suffered economic losses. For example, Mr. Johnson suffered a broken arm as a result of an automobile accident. He spent \$100 in doctors' bills and lost one month's salary of \$500. He recovered from the other person this \$600, plus another \$1,200 for general damages. Thus, it appears that he had economic losses of \$600 and recovered 300% of these losses. If the compensation for pain and suffering were ignored, it might appear as though Mr. Johnson was over-compensated. In fact he may be receiving only 100% recovery of the amount of damages he is legally entitled to. He may be compensated for only 75% or 50% of the assessment of his total damages. It is important then, to remember that even though this study has concentrated on economic losses there are other losses for which the law provides compensation.

In order that these general damages will not be completely ignored, the Osgoode Hall Study set out to do an analysis of them. With the assistance of a respected senior member of the negligence bar, an assessment of general damages was made in 222 of the serious cases. All of the necessary details

were given to this member of the bar who estimated the amount of general damages that a jury would award. This amount of general damages was added to the special damages suffered and the "legal losses" were arrived at.

It was discovered that the average of the legal losses suffered by the 222 people examined was \$4,861 and the median was \$1,974. It will be recalled that the average of the economic losses in the serious cases was \$3,383 and the median \$736. Thus, there was a substantially higher average legal loss, i.e. 43.7% higher, than there was an average economic loss.

An analysis was made of the ratio of tort recovery to the amount of legal losses. Earlier, the ratio of tort recovery to the economic loss was examined. It was felt that that analysis might indicate that the tort system was being rather over-generous with a few people who were recovering more than 100% or more than 200% of their economic losses. This analysis will indicate that where there was over-compensation of economic losses, there may still have been under-compensation of legal losses.

An example of the method of calculation will now be given. Mr. Johnson incurred \$600 in special damages. His general damages were estimated at \$1,800 by our expert. His total legal loss was thus \$600 + \$1,800 or \$2400. He recovered \$1,800 from the other person's insurer. Thus, the ratio of his tort recovery to his legal losses was 75%. Had this calculation been done on the basis of economic losses alone it would have appeared that Mr. Johnson secured a 300% tort recovery ratio. Therefore by analyzing legal losses and tort recovery another dimension is given to the tort recovery pattern. Table IV-8 describes the tort recovery ratios based on legal losses rather than economic losses.

There were 63.1% of the 222 people studied who received no tort recovery at all. There were 14.4% of the people studied who recovered 1 - 49%

TABLE IV - 8

**TORT RECOVERY RATIOS BASED ON LEGAL LOSSES  
IN THE SERIOUS CASES**

(Number of individuals studied with various  
amounts of legal loss according to percentage  
of tort recovery)

Amount of Legal Loss	Individuals studied		People with no tort recovery		People with 1-49% tort recovery		People with 50-99% tort recovery		People with 100% tort recovery	
	Number	%	Number	%	Number	%	Number	%	Number	%
1 - 49	26	100	23	88.5	2	7.7	1	3.8	0	0
50 - 99	9	100	7	77.8	1	11.1	1	11.1	0	0
100 - 199	17	100	5	29.4	5	29.4	5	29.4	2	11.8
200 - 299	18	100	12	66.7	4	22.2	2	11.1	0	0
300 - 499	28	100	18	64.3	3	10.7	2	7.1	5	17.9
500 - 999	42	100	26	61.9	5	11.9	10	23.8	1	2.4
1,000 - 1,999	37	100	27	73.0	3	8.1	5	13.5	2	5.4
2,000 - 4,999	23	100	12	52.2	3	13.0	5	21.7	3	13.0
5,000 - 9,999	5	100	3	60.0	1	20.0	1	20.0	0	0
10,000 +	17	100	7	41.2	5	29.4	3	17.6	2	11.8
TOTALS	222	100	140	63.1	32	14.4	35	15.8	15	6.8

of their legal losses and 15.8% who secured 50 - 99% of their legal losses. Only 6.8% received 100% or more of their legal losses. Thus, in 94.3% of the serious cases studied, less than 100% of the legal losses were recovered. Table IV-6 above indicates that when the tort recovery ratio was calculated on the basis of economic losses, 27.7% of the seriously injured people secured 100% or more recovery. These figures demonstrate the difference between legal loss and economic loss ratios. The same difference is apparent in those who recovered less than 100% of their legal losses. In Table IV-6 7.2% recovered between 1 - 49% of their economic losses and 8.1% recovered between 50 - 99% of their losses. There are larger percentages with partial recovery when the calculations are based on legal losses. The reason for this is that many of the individuals who are recovering more than their economic losses are recovering less than their legal losses.

An examination of Table IV-8 reveals that there are very few people who are compensated for their entire legal losses. A similar pattern exists in all categories of loss. Where the losses were between \$1 - 49, 88.5% received nothing, 7.7% received between 1 - 49% of their legal losses, 3.8% received between 50 - 99% of their legal losses and no one received over 100% of their loss.

Where the legal losses were between \$50 - 99, 77.8% received nothing, 11.1% between 1 - 49%, 11.1% between 50 - 99% and no one received over 100%. Where the losses were between \$100 - 199, 29.4% received nothing, 29.4% recovered between 1 - 49%, 29.4% recovered between 50 - 99% of their legal loss and 11.8% recovered 100% or better of their legal losses. Where the legal losses were between \$200 - 299, 66.7% recovered nothing, 22.2% recovered between 1 - 49%, and 11.1% recovered between 50 - 99%. No one received over 100%. Where the

losses grew to \$300 - 499, 64.3% received nothing, 10.7% between 1 - 49%, 7.1% between 50 - 99% and 17.9% 100% or better. Where the legal losses were between \$500 - 999, 61.9% received nothing, 11.9% between 1 - 49%, 23.8% between 50 - 99%, and 2.4% received 100% or more. Where the losses rose to \$1,000 - 1,999, 73.0% received nothing, 8.1% between 1 - 49%, 13.5% between 50 - 99% and 5.4% received 100% or better. Where the losses were between \$2,000 - 4,999 52.2% received nothing, 13.0% between 1 - 49%, 21.7% between 50 - 99% and 13.0% over 100%. Where the losses were between \$5,000 - 9,999, 60% recovered nothing, 20% between 1 - 49%, 20% between 50 - 99% and no one over 100%. In the last category of loss over \$10,000, 41.2% received nothing, 29.4% received 1 - 49%, 17.6% received between 50 - 99% and 11.8% got 100% or more.

In conclusion, one may see that very few individuals secure 100% of their legal losses or better. A larger number get something less than 100%. The largest group, however, receive no tort recovery at all.

- (1) Now the Motor Vehicle Accident Claims Fund, Motor Vehicle Accident Claims Act, 1961-62, S.O. 1961-62, c.84, s.1(c).
- (2) These figures may be inflated slightly since amounts paid back to insurers by way of subrogation were not deducted: For example, a person who recovers from his collision insurer. He then receives tort recovery from the other person including his collision loss. He must repay this amount he received from the other person to his collision insurer because of subrogation rights. An attempt was made, however, to learn the net recovery of the injured person after subrogation amounts were paid.
- (3) See Morris & Paul, The Financial Impact of Automobile Accidents, 110 U. Pa. L. Rev. 913 at 917 which used this terminology. For tort recovery this study used the word "award".
- (4) See Fleming, The Law of Torts (2d Ed. 1961) at p.117 for a fuller discussion of the Standard of Care in the Law of Torts.
- (5) R.S.O. 1960, c.172.
- (6) Ibid., Sections 62(a) - 100.
- (7) Ibid., s.64.
- (8) Ibid., s.63.
- (9) Ibid., s.69.
- (10) Ibid., ss.33-51.
- (11) Ibid., ss.59-62.
- (12) For a fuller discussion of these and other problems, see Horsley, Manual of Motor Vehicle Law (1963).
- (13) Highway Traffic Act, supra footnote 5, s.105(1).
- (14) Ibid. See also Ball and Brown, (1962) 2 O.H.L.J. 322 (student article) for a survey of the cases on this section.
- (15) S.O. 1930, c.48, s.10.
- (16) Highway Traffic Act, supra footnotes, s.106(1).
- (17) Wakelin v. London and S.W.Ry. Co. (1886), 12 App. Cas. 41, Fowler v. Laming, [1959] 1 Q.B. 426, [1959] 1 All E.R. 290 and see Eisener v. Maxwell, [1951] 3 D.L.R. 345.
- (18) Highway Traffic Act, supra, footnote 5, s.106(2).
- (19) Hutcheon v. Storey, [1935] 4 D.L.R. 684 (bicyclist)



- (20) McWhinney v. McCormack, [1946] O.W.N. 231.
- (21) Henderson J.A. in Temple v. Ottawa Drug Co., [1946] O.W.N. 295 (driver opened door and struck passing cyclist) and see also De Jussel v. Hajzar, [1948] O.W.N. 468 at p.470.
- (22) Pollock & Pizel v. Link Mfg. Co., [1955] O.W.N. 463 (overhanging sign); Bell Telephone Co. v. Kan Yan San, [1940] O.R. 510 (telephone pole).
- (23) See Highway Traffic Act, supra, footnote 5, s.1(1)15.
- (24) For further particulars see Horsley, op.cit. supra footnote 12, at p. 307 at ff.
- (25) See Highway Traffic Act, supra footnote 5, s.105(2).
- (26) See for example, The Vehicles and Highway Traffic Act, R.S.A. 1955, c.356, s.132. For the citation of the legislation in the other provinces see (1962) 40 Can. Bar Rev. at p.286, footnote 14.
- (27) Negligence Act, R.S.O., 1960, c.261, s.2(2).
- (28) See my articles on the subsection in (1962) 40 Can. Bar Rev. 284 and (1963) 41 Can. Bar Rev. 503 for further particulars and citation of cases.
- (29) Ouellette v. Johnson, (1963) S.C.R. 96.
- (30) Lemieux v. Bedard, [1953] O.R. 837, [1953] 4 D.L.R.252; Bohm v. Maurer, [1958] O.R.249.
- (31) See op. cit. supra. footnote 28.
- (32) Dorosz & Dorosz v. Koch, [1962] O.R. 105, 31 D.L.R. (2d) 139 (C.A.) cf with Feldstein v. Alloy Metal Sales, [1962] O.R. 476 (H.C.).
- (33) Duchaine v. Armstrong, [1957] O.W.N. 251 and see Morton, (1958) 36 Can. Bar Rev. 414.
- (34) Ibid.
- (35) See Morton, op.cit. supra, footnote 33 and my comments cited supra footnote 28. See the recent case of Co-operators Insurance Co. v. Kearney (1965), 48 D.L.R. (2d) 1 (S.C.C.).
- (36) Co-operators Insurance Co. v. Kearney, supra, footnote 35.
- (37) R.S.O., 1960, c.437. The relevant parts of the section read as follows:  
Where personal injury is caused to a workman . . . by reason of the negligence of his employer or of any person in the service of his employer acting within the scope of his employment, the workman . . . have an action against the employer . . . .

- (38) See Accident Facts (1961).
- (39) Butterfield v. Forrester (1809), 11 East 60, 103 E.R. 926.  
See also Fleming, op. cit. supra. footnote 4 at p.213.
- (40) See Prosser, Handbook of the Law of Torts (3d ed. 1964) at p.426.
- (41) Davies v. Mann (1842), 10 M. & W. 546, 152 E.R. 588. See MacIntyre, The Rationale of Last Clear Chance, 18 Can. Bar Rev. 665.
- (42) S.O., 1924, c.32.
- (43) R.S.O., 1960, c.261.
- (44) Ibid., s.4.
- (45) Ibid., s.8.
- (46) Ibid., s.5.
- (47) Wotta v. Haliburton Oil Co., [1955] S.C.R. 377.
- (48) Ibid., c.f. Leaman v. Rae, [1954] 4 D.L.R. 423 and Denning C.J. in Baker v. Market Harborough, [1953] 1 W.L.R. 1472.
- (49) Bray v. Palmer, [1953] 2 All E.R. 1449, Fogel v. Satnik (1960), 23 D.L.R. (2d) 630 (Ont. C.A.) Wotta v. Haliburton, supra, footnote 47.
- (50) Milligan v. MacDougall (1962), 32 D.L.R. (2d) 57 (P.E.I. C.A.).
- (51) Fairweather v. Renton (1963), 39 D.L.R. (2d) 249.
- (52) For example, see Dugas v. Le Clair (1962), 32 D.L.R. 459 (N.B. C.A.).
- (53) Negligence Act, footnote 43, supra, s.2(2). See also Harrington v. Haldimand, [1949] O.W.N. 407.
- (54) Ibid. s.2(3).
- (55) See MacIntyre, The Rationale of Imputed Negligence, 5 U. of T.L.J. 368 and Fleming, op. cit. supra. footnote 4 at p.244.
- (56) Negligence Act, supra footnote 43, s.2(1).
- (57) See Williams, Joint Torts and Contributory Negligence (1951), Horsley, op. cit. supra. at p. 403; Fleming, op. cit. supra. footnote 4 at p. 688.
- (58) Judicature Act, R.S.O., 1960, c.197, s.63, 64.
- (59) Ibid., s.61(1).
- (60) Ibid., s.61(2),(3).

- (61) Negligence Act, supra footnote 43, s.7.
- (62) Ibid., s.5.
- (63) For example, where the existence of insurance is mentioned.
- (64) Judicature Act, footnote 58, supra, s.26 and Rule 497, R.R.O., 1960, Reg. 396 as amended.
- (65) See Patillo, Practice on Appeals, in Law Society of Upper Canada Special Lectures (1952) at p.43. See also Phoenix Insurance v. McGhee (1890), 18 S.C.R. 61.
- (66) Supreme Court Act, R.S.C. 1952, c.259, s.36 as amended.
- (67) Ibid. s.38, 41.
- (68) Data supplied by the Department of Insurance, Ontario.
- (69) See Insurance Act, R.S.O. 1960, c.190, s.218 as amended by S.O. 1961-62, c.63, s.5.
- (70) Motor Vehicle Accident Claims Act, 1961-62, S.O. 1961-62, c.84 s.2 and Regulation 229 made thereunder. This fee helps to finance the Fund along with \$1 from each person with a driver's licence in the Province.
- (71) See Ibid. s.5.
- (72) Ibid. s.5(4).
- (73) For a description of this plan see Interim Report, Select Committee on Automobile Insurance, March 1961 at p.21.
- (74) Motor Vehicle Accident Claims Act, footnote 70 supra, s.5.
- (75) Ibid. s.11.
- (76) Ibid. s.22 (1), (4).
- (77) Ibid. s.5.
- (78) Ibid. 5(2).
- (79) Ibid. s.7.
- (80) Ibid. s.8.
- (81) Ibid. s.9.
- (82)  $\pm 572$ . Of the people suffering economic losses the recovery rate was 45.6%.
- (83)  $\pm 4.8\%$ .
- (84)  $\pm 572$ .
- (85)  $\pm 4.8\%$ .
- (86) Now the Motor Vehicle Accident Claims Fund.
- (87)  $\pm 586$ .
- (88)  $\pm 5.6\%$ .
- (89)  $\pm 54$ .
- (90)  $\pm 4.2\%$ .
- (91) 50, 84.
- (92) 30%, 46.5%.
- (93) Except for those with minor injuries. See infra Chapter V.
- (94) Only the first source of tort recovery was analyzed for this purpose.
- (95) These average recoveries were taken over all the cases studied. No separation was made between type of injury. Thus, the figures are only reliable for comparison purposes and not for descriptive purposes.
- (96) Over 70% of these people claimed as compared to between 40% and 58% who claimed in the other income categories.
- (97) See infra.
- (98) 20 people recovered from the Fund, 7 from the other person, and 244 from the other person's insurance company for a total of 271 in the sample. Although these figures include several people who recovered something from more than one source, this fact was ignored for calculation purposes.
- (99) 75 known individuals in the sample.
- (100) 140 known individuals in the sample.
- (101) There were unknown amounts of recovery in one fatal case and in two serious cases. These 3 cases are left out of these calculations.
- (102) See supra Chapter III.
- (103) The amounts recovered from the first source only were calculated for this purpose and not the total tort recovery each individual received from all three sources. Most of the people studied had tort recovery from only one source which was normally the other person's insurer.

- (104) There are 29 individuals in the sample who were not recorded here either because the amount of their loss or the amount of their recovery was unknown, or because they had no losses at all.
- (105) Chapter IV, C.1. supra.
- (106) In our sample, there were 20 people with minor injuries that suffered no economic loss. Two of them had tiny tort recovery. They are excluded from the calculations in this table. Two of the seriously injured and one of the fatal cases had an unknown tort recovery amount or an unknown loss amount. These people were included in the no tort recovery column merely to keep the chart symmetrical. These figures will therefore not correspond exactly with those in Table IV-1 supra.
- (107)  $\pm 576$ .
- (108)  $\pm 5.3\%$ .
- (109)  $\pm 576$ .
- (110)  $\pm 5.3\%$ .
- (111) No confidence limits given.
- (112) No confidence limits given.
- (113)  $\pm 592$ .
- (114)  $\pm 7.8\%$ .
- (115)  $\pm 312$ .
- (116)  $\pm 3.3\%$ .
- (117)  $\pm 335$ .
- (118)  $\pm 3.5\%$ .
- (119)  $\pm 525$ .
- (120)  $\pm 5.4\%$ .
- (121)  $\pm 54$ .
- (122)  $\pm 4.2$ .
- (123)  $\pm 29$ .
- (124)  $\pm 2.3\%$ .
- (125)  $\pm 30$ .
- (126)  $\pm 2.3\%$ .
- (127)  $\pm 49$ .
- (128)  $\pm 3.8\%$ .
- (129) 91, 126.
- (130) 53.5%, 72.5%.
- (131) 8, 27.
- (132) 5%, 17%.
- (133) 12, 35.
- (134) 7.5%, 21%.
- (135) 13, 42.
- (136) 10%, 25.5%.

## CHAPTER V - THE ROAD TO A TORT RECOVERY

### A. Litigation Procedure

The procedure used to reach a trial of the issues in an automobile accident case will now be examined briefly. Where the injured person is unable to settle his claim with the defendant personally or with the insurance adjuster representing the liability insurance company of the defendant, he may consult a lawyer. This lawyer will then probably attempt to settle the matter with the defendant or his insurance adjuster. If this attempt fails, the lawyer may proceed to litigation. The first step that a plaintiff must take is the issuance of a Writ of Summons in the Supreme Court of Ontario or in the County Court if the amount of the claim is under \$3,000 generally (1). The Writ of Summons must be served personally on the defendant (2). Counsel for the plaintiff may at the same time serve a Statement of Claim (3) as well as a Jury Notice, if a jury trial is desired (4). The defendant or his insurer, on behalf of the defendant, must then file an Appearance within 10 days (5) and a Statement of Defence within 20 days (6). The plaintiff may then file a Reply and Joinder of Issue and set the case down for trial (7). An oral Examination for Discovery normally follows at which time each party may question the other before a Special Examiner who takes down in shorthand all that is said (8). The transcript of these oral examinations may be used at the trial. Examination of documents (9) and a physical examination are provided for (10) and will probably have preceded the oral discovery. Many cases are settled by counsel at the time of the examination for discovery. Both counsel are fully apprised of the other's case, the losses, the respective strengths and weaknesses of the facts and of the parties themselves. In the event that a settlement is

still not reached the parties may proceed to trial. But settlement may occur at any time up to trial, at any time during the trial proceedings or even after decision while an appeal is pending. These are the steps that must be taken in order to have a trial of the case. Only a few of the people injured take any of these steps, fewer take most of them and still fewer are forced to take all of them.

B. Length of Time Taken to Receive Tort Recovery

1. Time Taken According to Type of Injury

Even though a claimant receives a good recovery in relation to his economic losses, he may have to wait a considerable length of time to receive it. Anxiety and hardship may be suffered by the claimant while he awaits the outcome of his claim, whether it is in litigation or not. Much criticism has been levelled at the delay in court. Thus, it is vital to examine the time factor in tort compensation, as well as the amounts that are recovered. Table V-1 describes the length of time taken to recover tort compensation in the cases in the sample where the time periods were known.

An examination of Table V-1 demonstrates that 38.6% of the minor cases where the time was known were settled in less than three months after the accident; 12.5% between 3 and 5 months; 15.6% between 6 - 8 months; 11.5% between 9 - 11 months; 13.6% between 12 - 17 months; 3.1% between 24 - 29 months; 3.1% between 30 - 35 months; 1% took over 36 months and 1% was still pending on September, 1964.

Thus, in the minor injury cases, 51.1% of the cases were settled in less than 6 months, 78.2% in less than 12 months and 91.8% within 24 months. Of the minor injury cases only 7.2% of the cases took longer than two years to settle and only 1% are still pending. It can be concluded that the vast majority of these minor injury cases are settled expeditiously.

A different picture is painted in the serious injury cases. An examination of Table V-1 indicates that 18% of the serious cases in the sample, where the time was known, were settled in less than 3 months after the injury,

TABLE V - 1

LENGTH OF TIME TAKEN TO RECEIVE TORT RECOVERY  
(Number of cases in sample where recovery time known  
and percentages of total cases where time known  
according to type of injury)

Type of Injury	No. Tort Recoveries Time Known		Length of Time in Months from Date of Accident to Date of Recovery									
			0 - 2 months		3 - 5 months		6 - 8 months		9 - 11 months		12 - 17 months	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Minor	96	100	37	38.6	12	12.5	15	15.6	11	11.5	13	13.6
Serious	150	100	27	18.0	11	7.3	15	10.0	9	6.0	27	18.
Fatal	22	100	8	36.4	4	18.2	2	9.1	2	9.1	2	9.1

Length of Time in Months from Date of Accident to Date of Recovery									
18-23 months		24 - 29 months		30-35 months		36 + months		Still Pending	
No.	%	No.	%	No.	%	No.	%	No.	%
0	-	3	3.1	3	3.1	1	1.0	1	1.0
12	8.	14	9.3	11	7.3	6	4.0	18	12.0
0	-	1	4.5	0	-	2	9.1	1	4.5

\*Rounding errors ignored

7.3% were settled between 3 and 5 months, 10% between 6 - 8 months, 6% between 9 - 11 months, 18% between 12 - 17 months, 8% between 18 - 23 months, 9.3% between 24 - 29 months, 7.3% between 30 - 35 months, 4% took over 3 years and 12% were still pending on September 1, 1964. Thus, of these cases, 25.3% were settled in less than 6 months, 41.3% in less than 12 months and 67.3% in less than 24 months. There were 32.6% of the serious cases which were not settled within 2 years and 12% of these were still pending on September 1, 1964. Looking at these figures another way, only 41.3% of the serious cases are settled within one year, whereas 58.6% take longer than one year to settle. In the minor injury cases, 78.2% are settled within one year and only 21.8% take longer than one year. It can be concluded that the serious cases are not settled as expeditiously as are the minor cases.

In the fatal cases the situation improves somewhat. Of the fatal cases in the sample where tort recoveries were received, 36.4% were received in less than 3 months, 18.2% between 3 and 5 months, 9.1% between 6 - 8 months, 9.1% between 9 - 11 months, 9.1% between 12 - 17 months, 4.5% between 24 - 29 months, 9.1% over 36 months and 4.5% were still pending on September 1, 1964. Thus, in the fatal cases 54.6% were settled within six months, 72.8% of them were settled within 12 months, and 81.9% were settled within 2 years. Only 18.1% of the fatal cases linger longer than 2 years. It can be concluded that the fatal cases are settled more expeditiously than the serious cases but less expeditiously than the minor cases.

A statistical estimate was done on the basis of the sample to determine the number of cases in the universe which were settled at various times. It was discovered that 124 cases (11) were still pending, 462 (12) had been completed over 2 years after the accident, 768 (13) between 12 and 23 months, 1,310 (14) between 6 and 11 months and 2,454 (15) had been settled

within 6 months of the accident. Of all the 4,423 minor cases in the universe, where there was recovery and the time of it was known, there were 2,258 (16) or 51.1% (17) settled within 6 months of the accident, 1,198 (18) or 27.1% (19) settled between 6 - 11 months, 599 (20) or 13.6% (21) settled between 12 - 23 months, 323 (22) or 7.2% (23) settled after 2 years and 46 or 1% were still pending (24) on September 1, 1964.

Of all the 627 serious cases in the universe, where there was recovery and the time was known, there were 159 (25) or 25.3% (26) settled within 6 months, 100 (27) or 16% (28) settled between 6 months and 1 year, 163 (29) or 26% (30) settled between 12 - 23 months, 130 (31) or 20.6% (32) settled after 2 years had elapsed and 75 (33) or 12% (34) still awaiting trial on September 1, 1964.

Of all the 67 fatal cases in the universe, where there was tort recovery and the time was known, there were 37 (35) or 54.6% (36) settled in less than 6 months, 12 (37) or 18.2% (38) between 6 and 11 months, 6 (39) or 9.1% (40) between 1 and 2 years, 9 (41) or 13.6% (42) beyond 2 years and 3 or 4.5% still pending (43).

Thus, the situation seems to be that both the minor cases and the fatal cases are settled considerably more quickly than are the serious injury cases. Aside from the fatality cases, the greater the severity of the injury, the longer the injured person must wait for any tort recovery he may secure. The other shocking fact is that on September 1, 1964 there were still awaiting trial 18 or 12% of the serious injury cases which were studied. All of the accidents studied occurred between January 1, 1961 and December 31, 1961.

## 2. Time Taken According to Amount of Economic Loss

To focus more sharply on the hardship caused as a result of the length of time taken to dispose of a tort claim, an examination of the time

taken according to the size of the economic loss was done. Table V-2 indicates when those people in the sample who secured tort recovery received payment, in accordance with the amount of their economic loss. Only those cases were tabulated in which the time of receipt was known. Cases in which lawyers were involved were separated from those where there were no lawyers into tables A and B.

Where the claimant had a lawyer, the larger loss cases took longer to settle, whereas the smaller loss cases seem to be settled more quickly. For example, a substantial number of the smaller cases were settled within 6 months after the accident. Of the cases where the total economic losses were less than \$500, the tort recovery was received in less than 6 months in 27% of the cases. Where the losses were between \$500 - 999 the tort recovery was received in less than 6 months in 18.6% of the cases; between \$1,000 - 1,999 it was 17.2%; between \$2,000 - 4,999 it was 4.8%; and where the losses were over \$10,000, in 11.8% of the cases the tort payment was received within 6 months.

A larger proportion of the payments were made within one year of the accident. Of the cases involving less than \$500 loss and in which there were lawyers, 60% of the payments were made within one year of the accident; of those between \$500 - 999 losses, 48.8% received payment in this period; and between \$1,000 - 1,999 losses, 44.8% were settled in less than one year. Once the losses advanced over \$2,000 there were only about one-half as many tort recoveries within the year: where the losses were between \$2,000 - 4,999, 23.8% were paid within the year, where they were between \$5,000 - 9,999, it was 16.6%, and where the losses exceeded \$10,000, 23.6% received tort compensation within the year.

**TABLE V - 2**

**Length of Time Taken to Receive Tort Recovery  
According to Amount of Economic Loss**

**A. Lawyer Retained**

Amount of Loss			Time Period in Months after the Injury									
			Under 6 months		6 - 11 months		12 - 23 months		24 - 35 months		36 months +	
\$	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
1 - 499	13	27.0	16	33.0	13	27.0	5	10.4	1	2.1	48	100
500 - 999	8	18.6	13	30.2	15	34.9	4	9.3	3	7.0	43	100
1000 - 1999	5	17.2	8	27.6	8	27.6	6	20.7	2	6.9	29	100
2000 - 4999	1	4.8	4	19.0	10	47.6	6	28.6	0	0.0	21	100
5000 - 9999	0	0.0	1	16.6	1	16.6	3	50.0	1	16.6	6	100
10000 +	2	11.8	2	11.8	3	17.6	8	47.1	2	11.8	17	100

**B. No Lawyer Retained**

Amount of Loss	Under 6 months		6 - 11 months		12 - 23 months		24 months +		Total cases	
	No.	%	No.	%	No.	%	No.	%		
1 - 499	47	85.5	6	10.9	2	3.6	0	0	55	100
500 - 999	13	86.7	2	13.3	0	0	0	0	15	100
1000 - 1999	3	42.9	2	28.6	2	28.5	0	0	7	100
2000 +	3	100.	0	0	0	0	0	0	3	100
TOTALS	66		10		4				80	

Looking at the other end of the scale, higher proportions of the large loss cases took longer than 2 years to settle. Where the losses were under \$500 only 12.5% of the cases were settled more than 2 years after the accident, where the losses were between \$500 - 999, 16.3% went longer than 2 years, where the losses were between \$1,000 - 1,999, 27.6% lingered beyond 2 years and where the losses were between \$2,000 - 4,999, 28.6% were settled after 2 years had elapsed. Where the losses rose to between \$5,000 - 9,999, 66.6% were settled after 2 years, and in the cases with over \$10,000 losses, 58.9% received their tort recovery only after two years had passed from the date of the accident. These figures tend to indicate that the larger loss cases are processed more slowly than the smaller ones.

The cases in which tort recovery was secured without the aid of a lawyer were processed more quickly. The vast majority of these cases, however, involved smaller loss amounts. Only 4 cases in the no lawyer sample required a full year from the time of the accident to be settled, the remaining cases being settled in less than one year. Well over 80% of the cases prosecuted without lawyers were settled in less than 6 months.

Consequently, the cases in which lawyers are not involved tend to be settled more quickly than those in which there were lawyers, but these cases are mostly smaller loss cases which are easier to settle. One fact that should not be forgotten is that the tort compensation ratio is smaller where no lawyer is in the picture. Therefore, those who press their tort claim without a lawyer seem to recover their compensation earlier than those who retain a lawyer, but they receive less than those who hire lawyers.



### 3. Time Taken According to Source of Recovery

A comparison of the time taken to receive recovery from the different sources was done. Of all the payments received from the other insurance company 66.4% were received within one year of the accident; of the receipts from the other person himself, 42.7% came within one year and only 5% of those against the Fund were received in this period. Of the receipts from the other person's insurer, 20.5% took between 1 and 2 years; 35% of the receipts from the Unsatisfied Judgment Fund came in this period and 14.3% of the payments from the other person personally were paid in this period. Only 13% of the payments by insurers took longer than two years, whereas 60% of the Fund payments were not made until after 2 years. Of the payment by the other person himself, 42.9% were made beyond 2 years after the accident.

These figures indicate the shocking delays in the old Unsatisfied Judgment Fund administration as compared with the private insurers. In 1963 the Unsatisfied Judgment Fund was completely overhauled and it is certain that its present administration is more efficient than it was during the period of this study. This Fund is now called the Motor Vehicle Accident Claims Fund. It is being operated very much like a private insurance company (44) whereas the old Fund had very cumbersome procedural requirements (45).

### C. Claims Made

#### 1. Claims According to Type of Injury

The road to a tort recovery may be long and tortuous or it may be short and direct. Recovery may come only after prolonged litigation or it may come swiftly after a request for payment is made to the defendant or his insurer. By the definition of "claim" used in this study, a court case need not have been filed in order for a "claim" to be made. A mere request from the defendant or his insurer in person or through a lawyer amounts to a "claim". Also by definition, no tort recovery could be obtained without a "claim" being made. Table V-3 depicts the number of persons who made tort claims.

Over one-half of all the people injured made no claim against the other person. Because they did not attempt to secure compensation, they received none. Of the 11,870 people injured in the County of York in 1961, 5,755 (46) or 48.5% (47) tried to recover from the other person or his insurer. Strangely enough the fatal accident cases generated the smallest percentage of claims; in only 73 (48) or in 42.1% (49) of the 174 fatal cases were claims made. On the other hand, claims were made by 5,022 (50) persons or 48.2% (51) of the 10,413 minor injury cases. Only in the serious injury cases did a majority of the victims claim tort compensation; in 660 (52) or in 51.5% (53) of the 1,283 serious cases claims were made. Therefore, 6,115 individuals (54) or 51.5% (55) of the injury victims made no attempt to recover from the other person and thus received nothing by way of tort recovery; in 51.8% of the minor cases, in 48.5% of the serious cases and in 57.9% of the fatal cases no claim was made. Consequently, the majority of people in the universe failed to claim and there-

TABLE V - 3

People who made claims  
by type of injury

(Number of people in the universe who made claims  
and percentage of total people injured)

Type of Injury	Sample size	Claims Made			No Claims Made		
		Number in sample	Number in universe	%	Number in sample	Number in universe	%
Minor	226	109	5,022	48.2	117	5,391	51.8
Serious	307	158	660	51.5	149	623	48.5
Fatal	57	24	73	42.1	33	101	57.9
ALL CASES	590	291	5,755	48.5	299	6,115	51.5

fore they could not recover anything by our definition. Only in the serious cases did a majority make a claim and here it was only a slight majority of 51.5%.

2. Claims Made According to Residence of Injured Person

A comparison was done of the incidence of claims in Metropolitan Toronto and outside of Metropolitan Toronto. Of the people who lived in Metropolitan Toronto who received minor injuries, 48.1% made a claim against the other person and 51.9% did not bother to claim. Of the people interviewed with minor injuries who lived outside of Metro, 50% made a claim and 50% did not make any claim. Of the people in Metropolitan Toronto who were seriously injured, there was a claim in 54% of the cases and in 46% there was no claim. Of those injured seriously who lived outside Metro only 40% of them made a claim while 60% did not claim. In the fatal cases, there were claims in 46.2% of the Metro cases, whereas there was no claim in 53.8% of the cases. Of the fatal injury cases outside of Metro, there were claims in only one-third of the cases, whereas in two-thirds of the cases the family failed to claim.

Thus, except for the minor cases, there appears to be a slightly higher propensity to claim in Metropolitan Toronto than there appears to be outside of Toronto. This is understandable since insurance company offices, insurance adjusters and lawyers may be more readily available in urban centres. Less time is taken and less travel is required in order to contact the necessary people. In addition, it may be that rural people and the people in the smaller towns are not as claim-conscious as are the people of larger cities.

3. Claims Made According to Amount of Economic Loss

A comparison was done with regard to the incidence of claims according to amount of economic loss. Of those who lost something between

\$1 - 49 only 25.6% bothered to make any claim and 74.4% abandoned their potential claims. Where the losses were between \$50 - 99, 48.3% claimed and 51.7% did not claim. However, where the losses amounted to between \$100 - 199, the incidence of claims rose to 67.4% and only 32.6% failed to claim. Where the losses were between \$200 - 299 the number claiming fell to 47.2% and compared with 52.8% who failed to claim. The percentage of those who claimed where the losses were between \$300 - 499 rose again to 50% who claimed and 50% who did not claim. In the category of loss between \$500 and 999, 61.9% made a claim and only 38.1% failed to do so. Between \$1,000 - 1,999 the percentage who claimed fell slightly to 54.5% compared with 45.5% who made no claim. Where the losses amounted to between \$2,000 and \$4,999, the percentage of those claiming rose to 70.5% whereas only 29.5% failed to claim. Where the losses exceeded \$5,000 the incidence of claims fell again to 49.2% whereas 50.8% did not claim.

Thus, only about a quarter of the cases with very small losses under \$50 gave rise to any claims. Where the losses were between \$50 and \$499 the incidence of claims was 50% or less, except for a higher incidence in one group of cases. Where the losses exceeded \$500, the percentage of claims rose to a high of 70.5% in the cases between \$2,000 and \$4,999 and began to fall off slightly in the cases of loss over \$5,000. It can be concluded that where the economic losses are large a claim is more likely to arise. However, it must be noted that there are substantial numbers of people, even in the large loss cases, who fail to make any claim at all. The converse of this is that there are large numbers of people who make claims even though they had rather small losses.

#### 4. Claims Made According to Category of Victim

There are three major groups of injured persons. There are the drivers themselves, the pedestrians (including bicyclists) and the passengers. The passengers include gratuitous and non-gratuitous passengers. The pedestrian, it will be recalled, has the benefit of a statutory onus which shifts the burden of proof to the defendant. The gratuitous passenger, on the other hand, is deprived of a right of action against his driver, although he may claim against the other driver, his recovery being reduced by the percentage of his driver's contributory fault. An examination of the different claim patterns for these different categories of injured person will now be made.

Of the drivers studied, 44.9% made a claim while 55.1% failed to claim. Of the pedestrians, however, a claim was made by 65.7% of those injured. Only 34.3% of the pedestrians refrained from making a claim. Of the bicyclists who were injured 44% claimed and 56% did not. Of the gratuitous passengers injured only 38.6% made a claim and 61.4% made no claim. Of the non-gratuitous passengers 62.5% claimed and 37.5% did not. This group of gratuitous passengers made up 95.1% of all the passengers. Thus, only some 4.9% of the passengers studied were non-gratuitous passengers and thus were able to use the Harrison arguments in order to recover against their own drivers (56).

It can be readily observed that the incidence of claims is highest among pedestrians and non-gratuitous passengers, whereas the drivers claim much less often and the gratuitous passengers claim still less often.

#### 5. Claims Made According to Income of Chief Supporter

Of those injured who earned less than \$3,000 per annum, or whose

chief supporter earned less than this amount, 49% claimed and 51% did not claim. Of those earning between \$3,000 and \$5,000 per annum 43% claimed and 57% failed to claim. Of those between \$5,000 and \$7,000 per annum 50.9% claimed and 49.1% did not. Of the people earning between \$7,000 and \$10,000, 70.6% claimed and only 29.4% did not claim. Of those earning over \$10,000 per annum 75% made a claim and only 25% did not. Thus, it appears that the people with incomes under \$5,000 per annum are less likely to claim than those who earn over \$5,000. In the higher income brackets the incidence of claims seems to be rather higher.

D. Lawyer Involvement

1. Consultation

Lawyers were involved in only a small proportion of the injury cases. A lawyer was consulted in only 4,418 or 37.3% of the 11,870 injury cases which occurred in the County of York in 1961. In the other 7,452 or 62.7% of the cases, no lawyer was consulted. As the injury increases in seriousness, consultation with a lawyer is more frequent. Thus, lawyers were consulted in 35% (59) of the minor cases, in 51.1% (60) of the serious and in 70.2% (61) of the fatal cases.

2. Retainer

Not all of the people who consulted a lawyer retained him to prosecute a claim on their behalf. Many individuals, after consulting a lawyer, proceeded to claim by themselves. Many individuals, after seeing a lawyer abandoned their claims altogether.

Although 4,418 of all the people injured saw a lawyer, only 3,423 (62) persons or 28.9% (63) retained a lawyer. In the minor cases only 27% (64) of the people injured retained a lawyer, in the serious cases it was 42% (65) and in the fatal cases it was 42.1% (66). In some of the cases where a lawyer was retained no claim was made but in the vast majority of cases the lawyers retained proceeded to claim on behalf of their clients.

3. Lawyer Consultation where no Claim Made

Only a few of the people who made no claim received legal advice prior to abandoning their claim. Of the 117 in the minor injury sample who made no claim, only 14 of them consulted a lawyer. Thus, 88% of the people with minor injuries, who abandoned their claim did so without consulting a lawyer as to their legal rights. Of the 149 seriously injured in the sample that did not claim, only 29 sought legal advice. Thus, 80.5% of these people abandoned their claim without the aid of a lawyer. In the fatal cases,

of the 33 who made no claims, only 19 consulted a lawyer. Therefore, a decision not to claim was made without legal counsel in 42.4% of the fatal cases.

These statistics indicate that a great many of the injured people, even in the serious and fatal cases, are deciding without consulting lawyers that they will not claim. The reasons most frequently given for this include the feeling that the respondent himself was at fault, the unwillingness or inability of gratuitous passengers to sue relatives or friends, the fear of the high cost of legal services, a general disinclination to become involved in court proceedings and, particularly in the smaller loss cases, the injury was said to be only slight and non-tort sources had already covered the expenses.

#### 4. Litigation Costs

The total of legal fees and court costs varied according to the source of recovery. In the cases surveyed the average legal costs, where there were such costs, amounted to \$549 where the payment was made by the other person's insurer, \$175 where the other person himself paid and \$867 where the old Unsatisfied Judgment Fund was involved.

One of the reasons for the higher cost in the Fund cases is that considerable time and effort of counsel was required normally because the old Fund used to resist claims rather strenuously. Court appearances were more often necessary and the paper work was substantial. Another partial explanation is that a larger proportion of serious cases would terminate in claims against the Fund; those with smaller losses were more likely to abandon their claims where there was an uninsured driver involved both because of ignorance about the existence of the Fund and the disinclination to bear the additional trouble of a Fund case.

### E. The Role of the Courts

#### 1. Writs Issued

Only a portion of the people injured in automobile accidents seek the aid of the court process to secure recovery. It is estimated that only 1,591 (67) Writs of Summons were issued by all the people injured in the County of York in 1961. Therefore, court action was commenced in only 13.4% (68) of all the injury cases. By a "court action commenced", this study means that a Writ of Summons was issued. It must be pointed out that there may have been a few situations where actions were started but the respondent was unaware of this. Where possible, these gaps were filled by direct consultation with the lawyer involved, or by examination of the court records. However, there may have been a very few people who had cases started on their behalf which have not been recorded by the study. It is doubtful whether any cases were recorded as started where they have not in fact been started.

The minor injuries gave rise to an estimated 1,198 (69) cases. In other words, 11.5% (70) of all the people who received minor injuries commenced a court action. Of all the seriously injured 372 (71) or 29% (72) of all these people commenced an action to recover tort damages. Of the fatal cases, only 21 (73) or 12.3% (74) of the families bereaved launched legal proceedings to secure tort compensation.

Of the cases in the sample that were studied there were 122 in which a Writ was issued. Twenty-four of these were issued within 3 months of the accident, 23 were issued between 3 and 6 months of the accident, 17 between 6 and 9 months and the balance of 44 were issued between 9 and 12 months after the accident. There is a limitation period of one year for all

Highway Traffic Act actions, after which time no action may be commenced (75). In 14 cases, the time of commencement of action was not known. Thus of the cases actually started where the time is known, 43.5% were begun in less than 6 months and 56.5% were not started until after 6 months had elapsed from the date of the accident.

It can be concluded that the majority of cases commenced are not started until after 6 months <sup>the</sup> of/date of injury. Often during this period negotiations are taking place between the plaintiff and the defendant or his insurer. Frequently, the reason for not commencing action is that the extent of the injury is not fully determined until several months have elapsed. Nevertheless, where litigation is started, it is not started normally until after the lapse of a significant time period.

#### 2. Statements of Claim Filed

In only 91 of the 590 cases studied was a statement of claim filed by the plaintiff. Thus, in 31 of the 122 cases studied in which an action was started, the action was settled or abandoned without proceeding further than the Writ of Summons stage.

In the cases where a Statement of Claim was filed, 7 were filed within 3 months after the accident, 19 between 3 - 6 months, 15 between 6 and 9 months, 19 between 9 and 12 months and 24 between 1-2 years and 3 over 2 years after the accident. In 4 cases time of filing was not known. Thus, 29.9% of the Statements of Claim where the time of filing was known were filed within 6 months, 39.1% between 6 months and 1 year and 31% were filed after at least 1 year had elapsed.

#### 3. Statements of Defence Filed

In 80 of the cases studied, Statements of Defence were filed by the defendant. Only two of these were filed within 3 months of the accident, 13 were filed between 3 and 6 months, 15 between 6 and 9 months, 14 between

9-11 months, 28 between 12-23 months and 4 were not filed until at least 2 years after the accident. In 4 cases the time of filing was not known. Thus, in 19.7% of the cases where the time was known Statements of Defence were filed within 6 months, in 38.2% of the cases they were filed between 6 months and 1 year and in 42.1% of the cases they were not filed until after one year had elapsed.

#### 4. Cases Set Down for Trial

There were 72 cases set down for trial of the ones studied, 45 for a jury trial and 27 for non-jury trial. Thus, 62.5% of the cases set down sought to have the matters determined by a jury.

Of the 45 cases set down for jury trial, 2 of them were set down in less than 6 months, 19 of them between 6 months and 1 year, and 20 of them were not set down until after a year. In 4 cases the time was unknown. Thus, in 48.8% of the cases, which were set down for jury trial, this operation was completed after 1 year had passed.

Of the 27 cases studied which were set down for trial by judge alone, 5 were set down in less than 6 months, 10 between 6 months and a year and 12 were not set down until after a year had gone by. Thus, in 44.4% of these cases, they were not set down until after a year had elapsed.

It can be observed that a jury trial seems to be selected more often than a trial by judge alone. Although a majority of the cases set down for trial are so set down prior to the passage of 1 year, almost half of these cases are not set down until after 1 year has passed from the date of the accident.

#### 5. Examinations for Discovery

The examination for discovery is a crucial time in the conduct of litigation. It is here that many cases are won or lost. In automobile

cases a settlement should be made at discovery, if a trial is to be avoided. Examinations for discovery were held in an estimated 588 cases (76) in the universe. Putting this another way, there were examinations for discovery held in 37.0% (77) of all the actions which were started. Only a small fraction of these survived to the commencement of trial.

These discoveries were held more frequently in the serious cases than in any of the other types of case. In 213 (78) of the serious injury cases, or in 57.3% (79) of the serious cases started, a discovery was held. In the minor cases a discovery was held in 369 cases (80) or in 30.8% (81) of these cases. In the fatals, only 6 (82) of the 174 cases went to discovery, or 28.6% (83) of these cases.

Thus, in the serious injury cases that are started, the majority of them go to discovery, whereas in the minor cases and the fatal cases a considerable majority of the cases started are settled or abandoned without the utilization of the discovery procedure.

The vast majority of the examinations for discovery are not held until at least a year after the accident. Of the discoveries held where the time was known, 34 or 66.7% were held after a year had elapsed and 7 of these or 13.7% were not held until 2 years after the accident. In only 17 or 33.3% of the cases was discovery completed within a year of the injury. In 10 cases the time of the examination for discovery was unknown.

#### 6. Trials Commenced

Although there were 1,591 cases started, only in 141 (84) was a trial actually begun. Thus, only 8.9% of the cases started as a result of the 1961 injuries in the County of York were actually brought to trial.

The percentage of trials commenced was highest in the fatal cases, lower in the serious cases and lowest in the minor cases. There were an

estimated 92 trials (85) commenced as a result of minor injuries, 46 (86) as a result of serious injuries and 3 (87) as a result of the fatalities. Taking these figures as a percentage of the cases started, we see that in 7.7% (88) of the minor cases, in 12.4% (89) of the serious ones and in 14.3% (90) of the fatal cases started, a trial of the issues is actually begun.

Of the 14 trials actually started in the cases studied 8 of them were with jury and 6 with judge alone. Of the 8 jury trials started, 3 were commenced between 1 and 2 years after the accident and 4 were begun only after 2 years. In one the time was unknown. Of the 6 non-jury cases 1 was started between 1 and 2 years and 3 were not begun until the lapse of at least 2 years. In 2 cases the time was unknown.

Thus, of the cases studied, no trials were begun in less than 1 year. Of the 11 trials commenced, in which the time was known, 7 or 63.6% of the cases did not start until at least 2 years after the accident. A total of 4 or 36.4% were begun between 1 and 2 years. It can be concluded that if a trial is needed it will most likely not occur until after 2 years from the date of the accident.

#### 7. Trials Completed

It is estimated that only 32 (91) of the 141 trials commenced were ever completed. Of these, 29 (92) were serious and 3 (93) were fatal. None of the minor injury trials studied were completed (94).

Of the 46 serious trials started, 29 (95) were completed. In other words, 63% of the serious trials commenced went to judgment and 37% were settled during the course of trial. Put another way, 7.9% (96) of the serious cases started went to trial judgment.

Of the sample studied, there were 8 completed trials. 4 were completed between 1 and 2 years after the accident and 4 were completed after 2 years had elapsed. In 6 of these cases the plaintiff was victorious

and in one the liability was split 50-50% and in one the plaintiff lost. One appeal was filed in the case which the plaintiff lost. The assessments of damages reached by the court in the cases studied were as follows: 2 between \$2,000 - 4,999; 4 between \$5,000 - 9,999 and 2 between \$10,000 and 49,999. No general conclusions should be drawn from this description because of the tiny number of cases in the sample that survived to this stage.

#### 8. Cases Still Pending

One rather shocking fact unearthed by the study was that there were almost as many cases still awaiting trial in September 1964 as had been actually tried since 1961. An estimated 124 cases (97) were still pending even though a minimum of 2 1/2 years and a maximum of 3 1/2 years had elapsed from the date of the accident out of which they arose.

There were more serious cases awaiting trial than had been tried. Still awaiting trial were 75 (98) or 20.2% (99) of the serious injury actions started. Among the minor cases, 46 (100) or 3.8% (101) of the actions started and 3 (102) or 14.3% (103) of the fatals were still awaiting a trial of the issue in September, 1964.

In the actual sample, there were 20 cases (1 minor, 1 fatal and 18 serious) still awaiting trial whereas only 14 (2 minor, 1 fatal and 11 serious) had commenced a trial.

These facts bring into bold relief the problem of delay in some cases, notably the serious injury cases. One of the reasons why these cases were still pending may be that they were weak on their merits. If so, even though a few of them will be tried eventually they are likely to be unsuccessful. Some of them will be abandoned and a few may secure a judgment. Other reasons for the delay include injuries with uncertain prognosis, difficulties encountered in having all the witnesses available at the same time, inadequate courtroom facilities, an insufficient number of judges, and others.

#### 9. Summary

Table V-4 depicts the number of cases in the sample that proceeded through each stage of litigation, according to type of injury. The percentage figures given are taken on the total number of injuries in the sample.

Of the people with minor injuries 48.2% made a claim, 11.5% issued a Writ, 7.1% filed a Statement of Claim, 3.5% held a discovery, .9% commenced a trial and .4% were still pending.

Of the individuals with serious injuries 51.5% claimed, 29% issued a Writ, 22.5% filed a Statement of Claim, 16.3% held a discovery, 3.6% started a trial, 2.3% completed it, and 5.9% were still awaiting trial.

In the fatal cases 42.1% claimed, 12.3% issued a Writ, 10.5% filed a Statement of Claim, 3.5% held a Discovery, 1.8% started a trial, 1.8% completed a trial and 1.8% were still awaiting trial.

Thus, the serious cases utilize the court processes more than the minor cases in order to obtain recovery. Very few of the cases started survive after discovery indicating that settlements are frequent after this stage of litigation. A large number of cases were still pending.



TABLE V - 4

The Road to a Tort Recovery

(Number of Cases in sample going through each stage of litigation and percentage of total injuries by type of injury)

Type of Injury	Number in sample	Claims Made		Writs Issued		Statement of Claim Filed	
		No.	% of all cases	No.	% of all cases	No.	% of all cases
Minor	226	109	48.2	26	11.5	16	7.1
Serious	307	158	51.5	89	29.0	69	22.5
Fatal	57	24	42.1	7	12.3	6	10.5

Type of Injury	Number in sample	Discovery Held		Trial Started		Trial Completed	
		No.	% of all cases	No.	% of all cases	No.	% of all cases
Minor	226	8	3.5	2	.9	0	-
Serious	307	50	16.3	11	3.6	7	2.3
Fatal	57	2	3.5	1	1.8	1	1.8

Type of Injury	Number in sample	Still Pending	
		No.	% of all cases
Minor	226	1	.4
Serious	307	18	5.9
Fatal	57	1	1.8

CHAPTER V - FOOTNOTES

- (1) See The County Courts Amendment Act, 1961-62, S.O.1961-62, c.24 amending Section 19(1) of the County Courts Act, R.S.O. 1960, c.76.
- (2) See Rule 16, Rules of Practice, R.R.O. 1960, Regulation 396 as amended.
- (3) See Rule 111 and following op. cit. supra. footnote 2. Grossberg, Practice Suggestions, special lectures of Law Society of Upper Canada, 1952 at p.5.
- (4) See Section 58, The Judicature Act, R.S.O. 1960, c.197 as amended.
- (5) Rule 45, op. cit. supra. footnote 2.
- (6) Rule 113, op. cit. and see Grossberg, footnote 3 supra.
- (7) See Rules 246-250.
- (8) See Rules 337-346.
- (9) Rule 347
- (10) The Judicature Act, footnote 4, supra, s.75.
- (11) No variances given.
- (12) " " "
- (13) " " "
- (14) " " "
- (15) " " "
- (16)  $\pm$  490
- (17)  $\pm$  8.9%
- (18)  $\pm$  384
- (19)  $\pm$  8%
- (20)  $\pm$  280
- (21)  $\pm$  6.2%
- (22)  $\pm$  218
- (23)  $\pm$  4.9%

(24) No variances given

(25)  $\pm$  36

(26)  $\pm$  5.5%

(27)  $\pm$  29

(28)  $\pm$  4.6%

(29)  $\pm$  36

(30)  $\pm$  5.5%

(31)  $\pm$  33

(32)  $\pm$  5.1%

(33)  $\pm$  26

(34)  $\pm$  4.2%

(35) 24, 52

(36) 38.8%, 69.7%

(37) 6, 24

(38) 8.5%, 33.5%

(39) 2, 17

(40) 3%, 22.8%

(41) 4, 20

(42) 3.7%, 28.9%

(43) No limits given.

(44) Mr. T. H. Bell (now retired) who was associated with General Accident Insurance Company was the first director of the new fund and contributed largely to its apparent success. See Motor Vehicle Accident Claims Act, 1961-62, s.o.1961-62, c.84.

(45) See Highway Traffic Act, R.S.O. 1960, c.172, ss.128-142.

(46)  $\pm$  576

(47)  $\pm$  4.9%

(48) 55, 90

(49) 33%, 51.5%

(50)  $\pm$  592

(51)  $\pm$  5.7%

(52)  $\pm$  55

(53)  $\pm$  4.3%

(54)  $\pm$  576

(55)  $\pm$  4.9%

(56) See Chapter IV, supra

(57)  $\pm$  555

(58)  $\pm$  4.7%

(59)  $\pm$  5.4%

(60)  $\pm$  4.3%

(61) 61, 79.5%

(62)  $\pm$  519

(63)  $\pm$  4.4%

(64)  $\pm$  5.1%

(65)  $\pm$  4.2%

(66) 33%, 51.5%

(67)  $\pm$  370

(68)  $\pm$  3.1%

(69)  $\pm$  384

(70)  $\pm$  3.7%

(71)  $\pm$  50

(72)  $\pm$  3.9%

(73) 12, 34

(74) 7.5%, 21%

(75) See Highway Traffic Act, R.S.O. 1960, c.172, s.147(1)

- (76)  $\pm$  232
- (77)  $\pm$  14.5%
- (78)  $\pm$  41
- (79)  $\pm$  8.1
- (80)  $\pm$  232
- (81)  $\pm$  17%
- (82) 2, 17
- (83) 9.5%, 59.2%
- (84) No confidence limits.
- (85) 18, 295
- (86)  $\pm$  21
- (87) 1, 13
- (88) No limits given
- (89)  $\pm$  5.6%
- (90) 3.1%, 45.2%
- (91) No limits given
- (92)  $\pm$  19
- (93) There was one fatal case in the sample in which a trial was started. It was completed. This estimate cannot be relied on.
- (94) Several must have been completed but no estimate could be made since the sample contained no completed minor injury trials.
- (95)  $\pm$  19
- (96)  $\pm$  4.7%
- (97) No limits given
- (98)  $\pm$  26
- (99)  $\pm$  6.7%
- (100) 2, 221
- (101) No limits given
- (102) 1, 13
- (103) 3.1%, 45.2%

## CHAPTER VI - NON-TORT RECOVERY

### A. The Social Welfare System of Ontario

#### 1. General

In recent years the Province of Ontario has created a rather complex social welfare system, which is available to assist anyone injured in an automobile accident. This study sought to assemble facts to facilitate an assessment of the role of social welfare in providing aid for the people injured in automobile accidents. A short outline of the most important features of the system will be of assistance in understanding the statistics which will follow.

#### 2. The Ontario Hospital Services Commission

During the period of this study, (1) 96.5% of the eligible residents of Ontario were covered by hospital insurance under "The Hospital Services Commission Act" (2). By the end of 1964, 98.7% of the eligible residents of Ontario were covered (3).

This hospital plan is government-operated and is financed by federal and provincial funds (4), as well as by private premiums (5). A subscriber is entitled to receive "insured services" (6) which include the entire in-patient hospital bill and out-patient services such as emergency service within 24 hours after an accident (7).

For certain groups such as employee units of 15 or more, enrolment in the plan is mandatory (8). Other groups may apply to become "mandatory groups" or "collector's groups" (9), and there are provisions for people to become "pay-direct participants" (10).

One significant provision is that individuals who are in receipt of public assistance because of needy circumstances may be provided with a hospital insurance certificate at the expense of the Ontario Government which entitles them to the same rights as ordinary subscribers (11).

Where the negligence of a third party is the cause of an injury, the Commission is subrogated to the right of the insured person to recover from that other person all or part of the cost of insured services provided (12). Thus the Commission is entitled to recover from the defendant in automobile cases the cost of hospital service provided to the injured person. This means that the OHSC is a party to most automobile cases that are commenced in Ontario. The Commission must be notified and it normally hires the plaintiff's counsel to represent it in the action as well as the injured person. A portion of the legal costs is also born by the OHSC (13).

### 3. Workmen's Compensation

The Province of Ontario has a Workmen's Compensation plan which compensates workmen for injuries suffered in accidents arising out of and in the course of their employment (14). Ontario was a pioneer in this type of legislation. Even now the scope of the services provided under the scheme is a model for study.

Prior to the passage of this legislation, the common law in this area had become repugnant to most people. The "common employment doctrine" precluded an employee from recovering compensation from his employer for the negligence of a fellow servant. In addition, the defence of "voluntary assumption of risk" deprived many workmen of their right of action, since it was felt that a worker waived his right to sue his employer when he agreed to engage in a dangerous type of work. The defence of contributory negligence could deprive the workman of compensation, where he was partially to blame for his injury. In addition to this trinity of defences, there was the

normal reticence of an employee to sue his employer. Employees often lacked the funds necessary to retain a lawyer.

The new Workmen's Compensation statute in 1915 swept all of this aside. The scheme created was a state-operated one administered by the Workmen's Compensation Board (15). Most employers are required to contribute to a fund and to pay assessments which are set periodically by the Board. These assessments may vary in accordance with the nature of the industry and the risk involved in its operations (16). A few industries such as railways, shipping, telephone companies, provincial governments and municipal governments are required to compensate their employees directly (17). There are only a small group of industries which are excluded from the operation of the scheme altogether (18).

Where a workman who is covered by the Statute is injured in an accident arising out of or in the course of his employment, he is entitled to benefits under the Act including hospital, medical and nursing care, and any necessary equipment (19). In addition, he is entitled to rehabilitation benefits to assist him in returning to work (20). Throughout the period of disability he will receive weekly payments of 75% of his average weekly wages during the previous twelve month period (21). If the workman is killed his family is entitled to burial costs up to \$300 and monthly income payments of \$75, subject to increase where there are dependent children (22).

The workman's right of action against an employer under Part I of the Act was removed by the statute. All claims under the act are heard by the Board (23), and the benefits awarded replace the common law right of action against the employer. Where a workman is injured by the negligence of a third person, who is not covered by the act, he may claim benefits under the Act or he may elect to sue that other person in court rather than receive his benefits (24). Where the workman chooses his benefits under the W.C.A., the

Board has subrogation rights against the third party (25). However, if the workman sues the third person but recovers less than he would have been entitled to under the Act, he may collect the difference from the Board (26).

Thus, where truck drivers, or other persons who earn their living in part by travelling from place to place in a motor vehicle, are injured in automobile accidents, they may be covered by the Workmen's Compensation Act and entitled to substantial benefits thereunder. The impact of their financial losses as a result of the accident may be minimized by this scheme.

#### 4. Disability Pensions

Under the Disabled Persons Allowances Act (27) the Province of Ontario has provided for small pensions to be paid monthly to people who are totally and permanently disabled and who comply with a rather stringent means test. There is a similar scheme for the payment of pensions to blind people under the Blind Persons' Allowance Act (28). The federal government shares the cost of these pensions with the provinces which administer them (29). Under these statutes there were in Ontario in 1962, 13,762 people in receipt of disability pensions and 1,846 people in receipt of blind persons' pensions (30). Both pensions are in the amount of \$75 per month (31).

A person who is a recipient of a disabled person's allowance or a blind person's allowance is "entitled without cost to receive medical services provided under any agreement between the Crown and the Ontario Medical Association". In addition, it will be recalled that these people are entitled to hospital care (32).

The means test provisions ensure that only those in need may receive these pensions. A disabled person who is unmarried may earn only \$1,260 annually inclusive of the allowance, \$2,200 if he is married, and slightly

more in certain specified situations (33). The means test for a blind person is slightly higher. A blind person may earn, without forfeiting his pension, \$1,500 per year, including the pension, \$2,580 if he is married and other specified amounts in other specific situations (34).

Thus, it can be seen that although some financial assistance is given to people who are disabled, it provides only subsistence living.

People who are severely injured in automobile accidents may become blind or totally and permanently disabled. Where this has occurred, they are eligible for these pensions and for the hospital and medical care provided in the regulations.

#### 5. General Welfare Assistance

In order to buttress the existing welfare legislation and in order to fill the gaps that existed, Ontario passed the General Welfare Assistance Act (35). This is a tri-level governmental scheme which brings together municipal administration, provincial financial and regulatory assistance, and federal financial contributions. Municipalities appoint "welfare administrators" to administer the welfare programmes (36). This welfare assistance is available to people in needy circumstances who are unable to maintain themselves for almost any reason (37). Of course, people who are unable to provide for themselves because of an automobile accident injury are eligible for general welfare assistance whether they are eligible for disability pensions or not. If they are eligible for and in receipt of a disability pension, they may receive "supplementary aid" (38). The province pays up to 80% of the amount paid as supplementary benefit to a maximum of \$16 per month. Thus, in practice, an additional \$20 general welfare payment

may be added to the \$75 per month disability pension in proper cases. If someone is not eligible for a disability pension because he is not "totally and permanently disabled", he may still qualify for an "incapacitation allowance" (39).

The amount paid is variable depending on the number of dependants that the applicant has. Detailed tables (40) are provided which range in amount from \$27.75 per month for a single person to \$179.20 per month for three adults and seven children. Additional payments are available where there is a special diet required, where fuel is needed to heat a place of residence or for cooking, and for transportation (41). Health, and medical and dental care (42) and burial expenses are provided when required (43). In March of 1960, some 68,274 people in Ontario were in receipt of some general welfare assistance.

#### 6. Medical Care

Ontario has adopted no government-sponsored "medicare" plan as yet (44). There is in existence, however, a number of privately operated plans, which in 1961 covered about 49% of the people of Canada (45). Both non-profit plans and private plans operate side by side.

The largest of the non-profit plans is the Physician's Services Incorporated which covered some 1,417,486 Ontario people in 1961. Other private groups called Associated Medical Services, Windsor Medical Services, Quebec Hospital Services Association and Blue Cross covered 671,870 and Co-operative Plans covered 253,460 persons. These later figures increased by almost a quarter of a million in 1962 (46). It is safe to assume that they have climbed still further in 1963, 1964 and 1965. The number covered in 1965 in Ontario is estimated at 75%. (47)

The various plans have schedules of fees for each of the different treatments provided by their member doctors. Normally there is a small deduction from the amount the doctor receives to cover the cost of administration. In the P.S.I. plan there is a 10% deduction from the agreed fee schedule which is borne by the doctor, if he is a member of the plan. If the doctor is not a member, the amount of the fee, less 10%, is sent directly to the subscriber. A doctor who is not a member is entitled to charge any fee he wishes. Thus, if a subscriber to one of the plans visits a doctor who is not a member of the plan he may be expected to pay a higher fee than that in his schedule of rates. He is also expected to bear the 10% administrative fee rather than the doctor. Some plans set the fees at amounts less than the O.M.A. fee schedule and thus they merely provide partial coverage to their subscribers.

#### 7. Other Programmes

In addition to these public and private programmes, there are many other potential sources of non-tort recovery. Many individuals carry private insurance to cover their loss as a result of collision expenses. Thus, if an individual suffers damage to his motor vehicle he may be able to recover the cost of repairs from his own collision insurance. There are many individuals who have life insurance and disability insurance. Thus, if someone is killed or disabled his widow or wife may receive financial aid from his life insurance company or his disability insurance company. There are some people whose employers contract to pay their wages in the event of their absence from work as part of their terms of employment. A person injured in a motor vehicle accident may receive such benefits. Sometimes, an employer

pays an employee some wages in these circumstances out of kindness alone even though there is no contractual obligation to do so. All of these sources of recovery, in addition to social welfare schemes, will be analyzed.

B. Estimated Total of Non-Tort Recovery in the Universe for Various Types of Recovery

All of the 11,870 people in the universe collected from non-tort recovery sources the amount of \$3,347,000 or 23.2% of the total losses. (48) These recoveries were under several main heads of recovery. Hospital insurance sources yielded \$909,000 (49) or 94.5% of the total loss; medical insurance sources paid out \$197,000 (50) or 24.9% of the total loss; collision insurance yielded \$937,000 (51) or 51.7% of the total loss, and income coverage sources disgorged \$849,000 (52) or 24.9% of the total loss. See Table VI - 1 for these figures in chart form.

Those in the minor injury stratum recovered an estimated \$388,000 (53) for hospital expenses, or 95.3% of the loss; \$77,000 (54) medical costs, or 17.9% of the loss; \$793,000 (55) collision losses or 51% of the loss, and \$210,000 (56) for income loss or 18.5% of the loss.

All of the seriously injured recovered \$513,000 (57) hospital coverage or 93.8% of the loss; \$117,000 (58) medical costs or 34% of the loss; \$137,000 (59) collision expenses or 58.3% of the loss and \$221,000 (60) income loss or 18.7% of the loss.

The families of the fatally injured secured estimated non-tort compensation from hospital insurance in the amount of \$8,000 or 100% of the loss (61), from medical sources, \$2,000 (62) or 16.7% of the loss, for collision insurance \$7,000 (63) or 30.4% of the loss and from income maintenance sources \$418,000 (64) or 38.7% of the loss.



TABLE VI- 1  
ESTIMATED TOTAL OF NON-TORT RECOVERY IN UNIVERSE FOR VARIOUS  
TYPES OF RECOVERY  
(Type of recovery and percentage of losses recovered  
according to type of injury)

Type of Injury	Hospital		Medical		Collision		Income		Other		Total	
	Amt.	% of loss	Amt.	% of loss	Amt.	% of loss	Amt.	% of loss	Amt.	% of loss	Amt.	% of loss
Minor	388,000	95.3	77,000	17.9	793,000	51.0	210,000	18.5	16,000	1.6	1,484,000	32.7
Serious	513,000	93.8	117,000	34.0	137,000	58.3	221,000	18.7	242,000	11.9	1,230,000	28.3
Fatal	8,000	100.	2,000	16.7	7,000	30.4	418,000	38.7	197,000	4.4	632,000	11.4
All Cases	909,000	94.5	196,000	24.9	937,000	51.7	849,000	24.9	456,000	6.1	3,347,000	23.2

C: The Non-Tort Recoveries Analyzed

1. Non-Tort Recoveries in the Minor Cases Studied

The total of non-tort recoveries in the minor cases studied was \$32,200 (65). This amount consisted of present recoveries entirely. No one who received minor injuries is expecting any future recovery from a non-tort source.

The largest head of recovery was private collision insurance recovery in the amount of \$17,220. There was also recovered from private and government hospital care plans \$8,415, from employers' payments or income maintenance insurance \$4,560 and from medical insurance schemes \$1,682. See Table VI - 2.

Of the 226 people with minor injuries, 175 or 77.4% received something from non-tort sources, and 51 or 22.6% received no non-tort recovery at all.

Of those people with minor injuries who recovered something from non-tort sources 109 or 48.2% of all cases recovered less than \$50, 33 or 14.6% recovered between \$50 - \$499 and only 23 or 10.2% recovered over \$500.

The average or mean total non-tort recovery of those who had some such recovery was \$184, and the median was \$40.

a. Hospital Recovery

On examination of the table there were 73 people or 32.3% of those people who received minor injuries who recovered nothing from private, government or hospital insurance. It should be recalled, however, that 53 of these people did not suffer any hospital expense. Of the remaining 153 or 67.7% of the people with minor injuries who recovered something from hospital coverage, 130 of them or 57.5% of all cases received less than \$50, 20 or 8.8% received between \$50 - \$499, and only 3 or 1.3% recovered over \$500. The average

TABLE VI - 2

NON-TORT RECOVERY IN THE MINOR CASES  
(Number of individuals in sample with various types of  
recovery according to amounts of recovery and source of recovery)

Recovery Amount	Hospital				Medical				Drugs			
	Own	Gov	Oth	All	Own	Gov	Oth	All	Own	Gov	Oth	All
Zero	75	226	224	73	204	224	220	197	226	225	226	225
1 - 49	129	0	1	130	16	2	4	21	0	1	0	1
50 - 99	7	0	0	7	1	0	1	2	0	0	0	0
100 - 199	5	0	0	5	4	0	1	5	0	0	0	0
200 - 299	3	0	0	3	0	0	0	0	0	0	0	0
300 - 499	5	0	0	5	0	0	8	0	0	0	0	0
500 - 999	2	0	0	2	1	0	0	1	0	0	0	0
1,000 - 1,999	0	0	1	1	0	0	0	0	0	0	0	0
2,000 - 4,999	0	0	0	0	0	0	0	0	0	0	0	0
5,000 - 9,999	0	0	0	0	0	0	0	0	0	0	0	0
10,000 -49,999	0	0	0	0	0	0	0	0	0	0	0	0
50,000 +	0	0	0	0	0	0	0	0	0	0	0	0
Total Persons with some Recovery	151	0	2	153	22	2	6	29	0	1	0	1
Total Persons in Sample	226	226	226	226	226	226	226	226	226	226	226	226
Mean of Cases where some Recovery	42	0	975	55	65	10	41	58	0	44	0	44
Median of Cases Where some Recovery	30	0	1000	30	34	10	37	34	0	44	0	44
TOTAL RECOV. in Sample	6342	0	1950	8415	1365	20	246	1682	0	44	0	44

TABLE VI - 2 cont'd. - p. 177

Collis.	Income				Rec.	Pres. Tot. Rec.				Grand Total Recov.			
	Own Ins.	Own	Gov	Oth		All	Oth	Cwn	Gov	Oth	All	Own	Gov
191	223	222	216	210	214	55	224	204	51	55	222	204	51
1	0	0	3	3	9	114	0	11	109	114	0	11	109
1	0	0	2	2	0	7	0	3	9	7	0	3	9
5	0	1	3	3	3	8	1	6	13	8	1	6	13
7	1	0	1	1	0	8	0	1	8	8	0	1	8
7	1	1	1	4	0	13	1	0	3	13	1	0	3
11	1	2	0	3	0	16	2	0	16	16	2	0	16
3	0	0	0	0	0	5	0	0	6	5	0	0	6
0	0	0	0	0	0	0	0	1	1	0	0	1	1
0	0	0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0	0	0
0	0	0	0	0	0	0	0	0	0	0	0	0	0
35	3	4	10	16	12	171	4	22	175	171	4	22	175
226	226	226	226	226	226	226	226	226	226	226	226	226	226
492	440	459	141	285	39	160	131	179	184	160	131	179	184
400	400	500	100	200	33	37	0	50	40	37	0	50	40
17220	1320	1836	1410	4560	468	27360	524	3938	32200	27360	524	3938	32200

or mean hospital recovery was \$55 and the median was \$30. Virtually all of these people recovered these amounts from the O.H.S.C. The government general welfare scheme and other sources were tapped for hospital costs by only two individuals in the sample.

b. Medical Recovery

Of the 226 people with minor injuries 197 or 87.2% receiving nothing from medical insurance schemes and 29 people or 12.8% recovered something. It must be remembered that 108 of these people had no medical expenses, however. Of those who did recover something from these sources, 21 or 9.3% of all cases received less than \$50, 7 or 3.1% received between \$50 - 499 and only 1 received over \$500. The average or mean medical recovery was \$58 and the median \$34. Only 2 people secured any aid from government and 6 had recovery from some other type of insurance such as passenger hazard or the like for medical costs.

c. Collision Recovery

Although 191 people, who received minor injuries received no collision insurance recovery, 148 of them had no collision loss. Of the 35 who did recover something 7 received less than \$200, 7 between \$200 - 299, 7 between \$300 - 499, and 14 received over \$500. The average or mean recovery from collision insurance where there was recovery was \$492 and the median \$400. All of these amounts were recovered from private collision insurance.

d. Income Recovery

Only 16 people with minor injuries recovered anything from income maintenance sources either private or government, even though there were 55 people who had income loss. Of those who recovered something, 5 recovered less than \$100, 8 between \$100 - 499 and only 3 above \$500. The average recovery here was \$285 and the mean \$200. Here private insurance paid benefits to 3 people, government welfare schemes provided 4 people with compensation and other schemes aided 10 individuals.

2. Non-Tort Recoveries in the Serious Cases Studied

The 307 seriously injured persons observed recovered from their own insurance, government and other sources some \$294,588. Some \$57,445 of this is expected future receipts and the balance is made up of present recoveries. The largest item of recovery was hospital costs of \$122,835. There was also recovered \$52,785 for income maintenance, \$32,680 from collision insurance, and \$27,972 from medical insurance sources.

Of the 307 people studied, 294 or 95.8% received something from a non-tort source and only 13 or 4.2% received nothing from any private insurance, government or other non-liability source. All of the individuals who suffered serious injuries incurred some economic loss.

Of those individuals who received something, 69 recovered less than \$50, 106 recovered between \$50 - 499, 55 recovered between \$500 - 999, 57 received between \$1,000 - 4,999 and 7 received over \$5,000. Thus 175 or 57.0% of all cases received less than \$500 and 119 or 38.8% received over \$500. The average or mean total recovery was \$1002 and the median \$325.

a. Hospital Recovery

There were 22 people who received nothing from hospital insurance sources. Only 4 people had no hospital expense. Of all the cases, 285 people or 92.8% had some hospital insurance recovery. 6 of these recovered something from a government welfare scheme and 12 had some recovery from other sources. Of these people who recovered, 101 received less than \$50, 23 received between \$50 - 99, 30 received between \$100 - 199, 31 between \$200 - 299, 33 between \$300 - 499, 40 between \$500 - 999, 14 between \$1,000 - 1,999, and 13 between \$2,000 - 9,999. The mean or average recovery is \$431 and the median \$161.

### NON-TORT RECOVERY IN THE SERIOUS CASES

(Number of individuals in sample with various types of recovery according to amounts of recovery and source of recovery)

Recov. Amount	Hospital				Medical				Drugs				Col- lis.	Income Own
	Own.	Gov.	Oth.	All	Own	Gov.	Oth.	All	Own	Gov.	Oth.	All		
Zero	26	301	295	22	206	296	288	181	302	304	302	294	267	286
1 - 49	102	2	7	101	35	5	5	41	5	2	3	10	0	2
50 - 99	21	0	1	23	11	2	5	17	0	0	2	2	1	1
100 - 199	32	1	1	30	27	2	1	30	0	1	0	1	2	4
200 - 299	29	1	1	31	14	1	1	15	0	0	0	0	3	3
300 - 499	34	0	1	33	11	1	3	16	0	0	0	0	7	4
500 - 999	37	1	1	40	2	0	2	4	0	0	0	0	14	5
1,000 - 1,999	15	0	0	14	0	0	2	2	0	0	0	0	11	1
2,000 - 4,999	10	1	0	12	0	0	0	0	0	0	0	0	2	0
5,000 - 9,999	1	0	0	1	1	0	0	1	0	0	0	0	0	0
10,000 - 49,999	0	0	0	0	0	0	0	0	0	0	0	0	0	1
50,000 +	0	0	0	0	0	0	0	0	0	0	0	0	0	0
People with some Recov.	281	6	12	285	101	11	19	126	5	3	5	13	40	21
Total People in sample	307	307	307	307	307	307	307	307	307	307	307	307	307	307
Mean in cases where some recov.	416	696	152	431	207	129	222	294	6	60	31	28	817	920
Median in cases where some recov.	154	200	42	161	116	62	116	94	0	37	41	33	751	325
TOTAL REC. IN SAMPLE	1,6896	4176	1824	122835	20907	1419	27972	5880	30	180	155	364	32680	19320

TABLE VI -3 Cont'd

Income			Rec.	Pres.	Tot.			Rec.	Fut.			Tot.	Rec.			Gr.	Tot.	Rec.		
Gov.	Oth.	All	Oth.	Own	Gov.	Oth.	All	Own	Gov.	Oth.	All	Own	Gov.	Oth.	All	Own	Gov.	Oth.	All	
300	282	256	250	17	298	243	13	305	304	226	302	17	297	243	13					
1	3	6	32	72	1	23	69	1	0	0	0	1	72	1	23	69				
0	2	2	4	22	0	3	21	0	0	0	0	22	0	3	21					
0	6	10	8	30	1	11	27	0	0	0	0	30	1	11	27					
0	4	7	5	25	1	7	26	0	0	0	0	25	1	7	26					
1	4	7	1	31	1	6	32	0	1	0	1	31	1	6	32					
0	2	8	3	57	1	7	55	0	0	0	0	57	1	7	55					
1	3	5	2	31	0	5	34	1	0	0	1	31	0	5	34					
3	1	4	2	20	2	2	24	0	1	0	1	20	3	2	23					
0	0	0	0	2	1	0	5	0	0	0	0	2	1	0	6					
1	0	2	0	0	1	0	1	0	0	0	0	00	0	0	0					
0	0	0	0	0	0	0	0	0	1	0	1	0	1	0	1					
7	25	51	57	290	9	350	294	2	3	0	5	290	10	64	294					
307	307	307	307	307	307	307	307	307	307	307	307	307	307	307	307					
3107	468	1035	257	645	3082	64	807	660	18704	0	11489	650	1385	350	1002					
2500	237	314	44	283	750	154	325	0	3500	0	1500	283	2000	154	325					
21749	11700	52785	14649	7050	22738	22400	237258	1320	56112	0	57445	188500	13850	22400	294588					

b. Medical Recovery

Of the people seriously injured, 181 recovered nothing from medical insurance sources. 51 of these people suffered no medical costs. 126 people received something from medical insurance sources. 41 persons recovered less than \$50, 17 between \$50 - 99, 30 between \$100 - 199, 15 between \$200 - 299, 16 between \$300 - 499 and 7 people over \$500. The average recovery was \$222 and the median was \$116. Of these people 101 received some aid from private insurance sources, 11 of them secured aid from government sources and 19 secured assistance from other sources.

c. Collision Recovery

Table VI - 3 shows that 267 persons had no collision recovery, but 222 of these had no collision loss. There were 3 people who recovered something under \$200, 10 people who recovered between \$200 - 500, 14 who recovered between \$500 - 999 and 13 who recovered over \$1,000 for collision losses. The largest number of people appeared to have lost over \$200 but under \$1,000. The average collision recovery, where there was some recovery, was \$817 and the median recovery was \$750. It can be seen that this item of present recovery is the second largest after income recovery that an injured person is likely to recover, if he does have collision recovery.

d. Income Recovery

Of the 256 people who secured no income loss recovery, 162 had no income loss. Of the 51 who secured recovery 8 were under \$100, 24 were between \$100 - 499, 13 were between \$500 - 1,999, and 6 were over \$2,000. 21 of these 51 people who recovered secured aid from their own insurance, 7 from the government and 25 from other sources. The average recovery was \$1,035 and the median was \$314. This was the largest item of present recovery

than an injured person would secure if he had such recovery.

3. Non-Tort Recoveries in the Fatal Cases Studied

The estates or families of the 57 people killed who were studied recovered some \$207,138 (66) made up of \$147,384 present recoveries and \$207,138 future recoveries. By far the largest item recovered was income maintenance or life insurance in the amount of \$137,016. The other items of recovery, it can be seen, are quite small. Table VI - 4 shows that total recovery in the sample for hospital expense was \$2,482, medical expenses \$740, collision \$2,300 and funeral costs \$1,920.

Of the 57 cases, there was some recovery in all but 11. Of the 46 in which some recovery was had, 12 recovered under \$500, 14 recovered between \$500 and 1,999, 9 between \$2,000 and 4,999, and 11 recovered over \$5,000. Thus, of the people killed, 19.3% received nothing, 24.6% received something under \$500, 24.6% recovered between \$500 - 1,999, 15.8% received between \$2,000 and 4,999 and only 19.3% received more than \$5,000. 40 people recovered something from their own income or life insurance, 3 had government aid and eleven secured some income recovery from other sources. Some, of course, recovered from more than one of these sources.

The average recovery in the death cases, where there was recovery, was \$4,503 but the median was only \$1,699. This indicates that in the typical case where there is recovery, less than \$2,000 is recovered by the family of the deceased from private insurance, government and all other sources combined, even though the average loss is \$31,960 and the median loss is \$7,500

a. Specific Items of Recovery

Of the specific items of recovery these matters may be noted. In only 8 cases was any amount recovered which specifically covered funeral

TABLE VI - 4

**NON-TORT RECOVERY IN THE FATAL CASES**  
(Number of individuals in sample with various types of recovery according to amount of recovery and source of recovery)

Recov. Amount	Hospital				Medical				Col-lis.	Income			
	Own	Gov	Oth	All	Own	Gov	Oth	All		Own	Gov	Oth	All
Zero	42	57	54	40	55	57	54	52	52	22	54	56	21
1 - 49	7	0	1	8	1	0	0	1	0	0	0	0	0
50-99	4	0	0	4	1	0	0	1	0	0	0	0	0
100-199	2	0	1	2	0	0	0	0	0	3	0	0	3
200-299	0	0	1	1	0	0	3	3	1	2	0	1	2
300-499	1	0	0	0	0	0	0	0	3	0	1	0	0
500-999	1	0	0	2	0	0	0	0	0	2	0	0	2
1000-1999	0	0	0	0	0	0	0	0	1	10	0	0	10
2000-4999	0	0	0	0	0	0	0	0	0	8	1	0	8
5000-9999	0	0	0	0	0	0	0	0	0	7	1	0	8
10000-49999	0	0	0	0	0	0	0	0	0	3	0	0	3
50000 +	0	0	0	0	0	0	0	0	0	0	0	0	0
Persons in sample with some recov.	15	0	3	17	2	0	3	5	5	25	3	1	36
Total People in sample	57	57	57	57	57	57	57	57	57	57	57	57	57
Mean in cases where some recov.	138	0	138	146	53	0	212	148	460	3650	2993	280	3806
Median in cases where some recov.	56	0	150	56	50	0	250	216	400	2187	3500	280	2375
Total Recov. in sample 2070	0	414	2482	107	0	636	740	2300	91250	8979	280	137016	

TABLE VI - 4 Cont'd.

Funeral				Rec.	Pres. Tot. Rec.				Fut. Tot. Rec.				Gr. Tot. Rec.			
Own	Gov	Oth	All		Own	Gov	Oth	All	Own	Gov	Oth	All	Own	Gov	Oth	All
55	56	52	49	48	17	54	46	11	56	55	57	54	17	54	46	11
0	0	1	1	5	1	0	3	3	0	0	0	0	1	0	3	3
0	0	0	0	0	1	0	0	1	0	0	0	0	1	0	0	1
0	0	0	0	1	2	0	1	2	0	0	0	0	2	0	1	2
0	0	0	0	2	2	0	3	3	0	0	0	0	2	0	3	3
1	1	2	4	0	2	1	3	3	0	0	0	0	2	1	3	3
0	0	2	2	1	3	0	1	4	0	0	0	0	3	0	1	4
1	0	0	1	0	10	0	0	10	0	0	0	0	10	0	0	10
0	0	0	0	0	9	1	0	9	0	0	0	0	9	0	0	9
0	0	0	0	0	7	1	0	8	0	0	0	0	6	2	0	6
0	0	0	0	0	3	0	0	3	0	2	0	3	4	0	0	5
0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0
2	1	5	8	9	40	3	11	46	1	2	0	3	40	3	11	46
57	57	57	57	57	57	57	57	57	57	57	57	57	57	57	57	57
700	300	384	452	131	3394	2992	241	3204	14350	-	0	-	3753	18125	241	4503
0	300	449	449	44	1899	3500	250	1699	0	22701	0	19917	1899	20000	250	1699
1400	300	1920	3616	1179	135840	8976	2651	147384	14350	45402	0	59751	150120	54376	2651	207138

expenses and in only three of these cases was the amount in excess of \$500 even though all 57 had burial expenses. There were 36 of the fatally injured who had some recovery from a life insurance policy or income maintenance insurance, but in only 19 of these did the recovery amount exceed \$2,000, 10 of the recoveries were between \$1,000 and \$1,999 and 7 were less than \$1,000. In only 5 of these fatal cases was there any collision recovery, in only 5 cases was there any medical insurance recovery and in only 17 cases was any hospital insurance recovered. Of course, there was no loss suffered in each of these categories in all the 57 fatal cases.

D. Non-Tort Recovery Ratios

1. Total Non-Tort Recovery compared to Total Losses

Although tort recovery is the major source of compensation for automobile accident victims, other sources of recovery supplied a substantial amount of compensation. Many of the people who went without tort compensation did receive something from non-tort sources. Many who had tort recovery had non-tort recovery as well. An examination was made of the non-tort recovery ratios secured by the people in the universe who suffered economic losses. The tort recoveries which they secured were ignored for this purpose (67). Their total non-tort recovery from all sources was compared with their total economic loss. For example, Mr. Adams suffered a hospital loss of \$100, a doctor cost of \$100, collision loss of \$200 and income losses of \$100 for a total economic loss of \$500. Even though he may have received nothing from the other person he was covered by the Ontario Hospital Services Commission for his complete hospital bill, his P.S.I. coverage yielded him \$50, his own collision insurer paid him \$100 for the excess of his loss over his \$100 deductible policy and his employer paid him \$50 salary for one of the two weeks he was absent from work, a total of \$300. His non-tort compensation ratio was .6. In other words, in addition to any tort recovery he may have received, he recovered from all non-tort sources 60% of his total losses. Table VI - 5 demonstrates the non-tort recovery ratios in percentages of all the individuals in the universe who suffered some economic loss.

Of the 10,948 people who suffered some economic loss, 9432 (68) or 86.2% (69) received some compensation from a non-tort source. Only 1516 (70) individuals or 13.8% (71) received nothing by way of non-tort recovery. Of the people who did receive something, 4218 (72) or 38.5% received less than 50% of their losses, 3286 or 30% received between 50 and 99% of their

TABLE VI - 5

**NON-TORT RECOVERY RATIOS**  
**TOTAL LOSSES COMPARED TO TOTAL NON-TORT RECOVERY**  
 (Numbers of persons in the universe and percentage figures  
 according to type of injury in cases where some loss incurred)

Type of Injury	People with Losses		People with no Non-Tort Recov.		People with non-tort recov. of 1 - 49%		People with non-tort recov. of 50 - 99%		People with non-tort recov. of 100% +		Total people with some non-tort recovery	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Minor	9491	100	1428	15.0	3548	37.5	2718	28.6	1797	18.9	8063	85
Serious	1283	100	54	4.2	560	43.7	556	43.3	113	8.8	1229	95.8
Fatal	174	100	34	19.3	110	63.2	12	7.0	18	10.5	140	80.7
All Cases	10948	100	1516	13.8	4218	38.5	3286	30.0	1928	17.6	9432	86.2

- 17 -

losses and 1928 individuals or 17.6% were fully compensated or received more than they lost. Thus, there were 9020 people or 82.4% of the people who received less than full compensation from their own insurance, government and other non-tort sources. Only 1928 or 17.6% were fully compensated by non-tort sources alone.

An examination of the non-tort recovery ratios by class of injury reveals that 1428 (73) or 15% (74) of the 9491 people with minor injuries who suffered economic loss received nothing from a non-tort source, 3548 (75) or 37.5% (76) received something less than one-half of their losses, 2718 (77) or 28.6% (78) received between 50% and 99% of their losses and 1797 (79) or 18.9% (80) were fully or more than fully compensated by these sources. Thus, 7,694 or 81.1% of the people with minor injuries who suffered loss were not fully recompensed by non-tort sources for all of their losses and only 1797 or 18.9% were fully recompensed by these sources.

Of the 1283 serious injury cases only 54 (81) or 4.2% (82) received nothing from non-tort sources, 560 (83) or 43.7% (84) received less than one-half their losses, 556 (85) or 43.3% (86) received between one-half and 99% of their losses and 113 (87) or 8.8% (88) were fully or more than fully recompensed for their total losses. Thus, 1170 or 91.2% of the seriously injured received less than full compensation from non-tort sources and only 113 or 8.8% were completely compensated by these sources alone.

In the 174 fatal cases, 34 (89) or 19.3% (90) received nothing from non-tort sources, 110 (91) or 63.2% (92) received less than one-half of their total losses, 12 (93) or 7% (94) recovered between 50% and 99% and 18 (95) or 10.5% (96) were fully or more than fully recompensed. Thus, 156 or 89.7% of the fatal injury cases were less than fully compensated and only 18 or 10.3% received full compensation or better from non-tort sources.



In conclusion, the non-tort compensation sources, by themselves provide full compensation for only a very few i.e. 17.6% of all accident victims. These regimes provide full compensation for substantially more of those with minor injuries than for those with serious or fatal injuries. The impact of these sources cannot be minimized, however. Of all the people injured 86.2% did receive some aid from these sources. A good proportion, 30%, received between one-half and 99% of their losses. Another substantial group received partial recovery but less than one-half of their losses. The other matter that must be kept in mind is that the role of these private and public welfare measures is on the increase and that the tort system also yields some recovery to many of these people.

## 2. Non-Tort Recovery Ratios for Specific Items of Loss

### a. Hospital Costs

Of all the people in the universe with economic losses 9,292 or 78.3% (97) suffered some hospital costs. Almost every one in the seriously injured category, i.e. 98.7%, had hospital expense, 76.5% in the minor cases and 35.1% in the fatal cases.

Table VI - 6(a) indicates the recovery ratios of the people in the sample who suffered some hospital losses. One can readily see that the payment of hospital losses seems to be well taken care of by present non-tort methods, notably the O.H.S.C. There were 85% of the people with minor injuries who received more than 75% of their losses, 88.8% of the seriously injured who received more than 75% of their losses, and 80% of the fatal injury cases in which hospital losses were compensated at more than 75%. Of the minor cases in which loss was suffered 11.6% received nothing or something less than 24% of their loss, in the serious cases 6.9% received less than 24% and in the fatal cases 15% of those with losses received less than 24% of this item of their loss.

TABLE VI - 6

### NON-TORT RECOVERY RATIOS FOR SPECIFIC ITEMS OF LOSS

(Number of persons in sample with various recovery ratios and percentage figures of those with losses)

#### (a) Hospital Costs

Type of Injury	People	People		Ratio of Recovery where some loss							
	No Loss	with Loss		0 - 24%		25 - 49%		50 - 74%		75% +	
		No.	%	No.	%	No.	%	No.	%	No.	%
Minor	53	173	100	20	11.6	3	1.7	3	1.7	147	85
Serious	4	303	100	21	6.9	5	1.7	8	2.6	269	88.8
Fatal	37	20	100	3	15.0	0	-	1	5.0	16	80

#### (b) Medical Costs

Type of Injury	People No Loss	People with Loss		Ratio of Recovery where some loss							
				0 - 24%		25 - 49%		50 - 74%		75% +	
		No.	%	No.	%	No.	%	No.	%	No.	%
Minor	108	118	100	91	77.1	0	-	0	-	27	22.9
Serious	51	256	100	142	55.5	13	5.1	11	4.3	90	35.1
Fatal	37	20	100	15	75.0	0	-	1	5.0	4	20.0

#### (c) Collision Losses

Type of Injury	People No Loss	People with Loss		Ratio of Recovery where some loss							
				0 - 24%		25 - 49%		50 - 74%		75% +	
Minor	148	78	100	44	56.4	0	-	7	9.0	27	34.6
Serious	222	85	100	46	54.1	0	-	4	4.7	35	41.2
Fatal	46	11	100	7	63.6	0	-	0	-	4	36.4

#### (d) Income Losses

Type of Injury	People No Loss	People with Loss		Ratio of Recovery where some loss							
				0 - 24%		25 - 49%		50 - 74%		75% +	
Minor	171	55	100	40	72.8	1	1.8	2	3.6	12	21.8
Serious	162	145	100	108	74.5	13	9.0	4	2.7	20	13.8
Fatal	25	32	100	13	40.6	10	31.3	2	6.2	7	21.9

#### (e) Funeral Expenses

Type of Injury	People with Losses	Ratio of Recovery where some loss							
		0 - 24%		25 - 49%		50 - 74%		75% +	
		No.	%	No.	%	No.	%	No.	%
Fatal	57	50	87.7	1	1.7	3	5.3	3	5.3

Thus, there are only a small number of people who had hospital costs that did not receive all or almost all of their losses from their own insurance sources, or government. It should be kept in mind that the incidence of hospitalization coverage in Ontario has increased since the period of the study. Thus, if one were to study this question today one would probably find that the hospital costs of automobile accident victims are now almost completely covered by non-tort sources.

b. Medical Costs

A very different picture existed with regard to the medical costs incurred by the people studied. Of the people in the universe who were injured and suffered some economic losses, 6568 or 55.3% incurred some medical expenses (98). Of the people with minor injuries 52.2% suffered medical costs; of the people with serious injuries 83.4% suffered medical costs and of the fatal injury cases 35.1% incurred medical costs.

Table VI - 6(b) shows the recovery ratios of those who suffered some medical expense. It is apparent that in 1961 these costs were not well provided for by the existing non-tort regimes. There were 77.1% of those with minor injuries who incurred medical costs who received nothing, or something less than 24% of their losses, 55.5% of those with serious injuries received less than 24% of their costs and 75% of the fatal injury cases recovered nothing or something less than 25% of the losses incurred.

On the other side there were only 22.9% of the minor cases, 35.1% of the serious cases and 20% of the fatal ones in which 75% or better of the losses were recovered. These figures indicate that the cost of medical services were poorly looked after by the private medical insurance schemes, government and other non-tort sources. Recently, the Hagey Commission has reported that about 75% of the people in Ontario are now covered by some medical insurance.

If this is so, another study should indicate that more of these expenses are now being looked after by the private insurance schemes than were looked after in 1961, the period of study. There will still be a substantial gap in medical insurance coverage however. During the period of the study over 50% of the population were apparently covered by some sort of medical insurance plan and yet many fewer than 50% of those with losses had full compensation for their medical losses.

c. Collision Losses

Of all the people injured 3983 or 33.6% (99) suffered economic loss as a result of damage to their automobile. Of those in the minor injury category 34.5% suffered collision loss, in the serious injury category 27.7% suffered this loss and in the fatal injury category 19.3% suffered some collision expense.

Table VI - 6(c) shows that the largest proportion of people with collision losses in all categories either received nothing or less than 24% of their losses. Receiving less than 24% of their losses were 56.4% of the minor injury cases, 54.1% of the serious cases, and 63.6% of the fatal cases. Only 34.6% of the minor injury cases, 41.2% of the serious cases and 36.4% of the fatal cases had more than 75% recovery for this item of loss. Thus, this item of loss is very poorly covered by the present collision insurance scheme. It is doubtful whether any substantial increase of this type of coverage is imminent.

d. Income Losses

Perhaps the most significant lacuna in private insurance coverage is with regard to income maintenance. There were 3238 people or 27.3% (100) of those with injuries and economic losses who suffered income loss as a result of an automobile accident. In the minor cases only 24.3% suffered this type

of loss; in the serious 47.2% suffered this type of loss and in the fatal cases 56.1% suffered some income loss.

The vast majority of these people received either no non-tort compensation or something less than 24% of their loss. Of those with minor injuries who suffered income loss, 72.8% received nothing or less than 24% of their loss. Of those with serious injuries 74.5% recovered less than 24% and in the fatal cases 40.6% recovered less than 24%. Recovering 75% or more of their income losses were 21.8% of the minor injury cases, 13.8% of the serious ones and 21.9% of the fatals. It should be recalled that in these cases life insurance payments were included as payments toward income loss. Thus, in the area of income maintenance insurance there is a great gap in coverage. This void is perhaps one of the most serious revealed in this study. Where a bread-winner is killed or disabled large losses are built up. It is here where aid is most needed. Yet it is here where the non-tort system is least effective in securing full compensation. The role of the disability pensions, general welfare payments and workmen's compensation programmes appear almost insignificant in this area (101). Not only does there appear to be great ignorance about the existence of these welfare programmes but very few people seem to be qualified to receive assistance from these sources. Any proposed scheme will have to examine with care coverage for this item of loss.

e. Funeral Expenses

There were substantial burial expenses incurred on behalf of all the people who were killed in automobile accidents. Very few people had any kind of insurance scheme which covered burial expenses specifically. Of course, many of those who purchase life insurance do so with the thought that the

proceeds of this fund will pay the funeral costs. However, there were only 5.3% of the cases in which 75% or more of the burial expenses were paid by a specific insurance or other fund earmarked for this purpose. There were 87.7% of the funeral costs which were not reimbursed at all or reimbursed in the amount of less than 24% of the cost. This is another matter that must be assessed by any new scheme. This is especially so since the average cost of funeral and burial expenses of the people studied was \$876.

CHAPTER VI - FOOTNOTES

- (1) As at December 31, 1960, see Annual Report of the Ontario Hospital Services Commission (1960)
- (2) R.S.O. 1960, c.176
- (3) Estimate provided by the staff of the O.H.S.C.
- (4) See Section 13 of the Act, footnote 2 supra, empowering the province to enter cost sharing agreements with the federal government
- (5) In 1960 the premium for a single individual under the plan was \$2.10 per month. See R.R.O. 1960, Regulation 238, s.2(1)
- (6) R.R.O. 1960, Regulation 238, s.46(1)
- (7) Id., s.1(1)(b), s.1(3)(i), s.1(3)(m)
- (8) Id. s.5(1)
- (9) Id. s.5(2), s.15, s.27
- (10) Id. s.31, 32
- (11) Id. s.34
- (12) Id. s.52(2) as amended by O.Reg. 186/61, s.2
- (13) Id. s.52
- (14) See Workmen's Compensation Act, R.S.O. 1960, c.437, s.3
- (15) Id. s.54 and following
- (16) Id., s.4
- (17) Id., s.5 and Schedule II
- (18) Included in this group are educators, funeral directors, until recently agriculturalists
- (19) S.51(1)
- (20) S.53
- (21) Ss.40-44. The maximum annual wage upon which these benefits are calculated is \$6,000. See s.o. 1962-63, c.145
- (22) See s.37 for details
- (23) s.13
- (24) s.9(1)
- (25) s.9(3)

- (26) S.9(2)
- (27) R.S.O. 1960, c.107
- (28) R.S.O. 1960, c.35
- (29) See Disabled Persons Act, s.c. 1953-54, c.55, and Blind Persons Act, R.S.C. 1952, c.17 and amendments
- (30) Canada Year Book (1963-64) at p.297-8
- (31) See S.C.1963, c.26, s.3(1)
- (32) See R.R.O. 1960, Regulation 114, s.6 and Regulation 38, s.4
- (33) See S.C.1963, c.26, s.2 amending section 3 of Disabled Persons Act
- (34) See S.C. 1963, c.26, s.3 amending section 3 of Blind Persons Act
- (35) Now R.S.O. 1960, c.164
- (36) See s.3,4,5 of General Welfare Assistance Act
- (37) R.R.O. 1960, Regulation 207, sectionG(1)
- (38) See s.8 of Act
- (39) See R.R.O. 1960, Regulation 207, s.26 •
- (40) See Regulation 207, footnote 39 supra
- (41) Regulation 207, section 30 footnote 39 supra
- (42) Regulation 207, section 30, footnote 39 supra
- (43) Regulation 207, section 30, 33, 34, 35
- (44) The Hagey Commission Report has recommended the establishment of a government assisted medical care plan
- (45) See Canada Year Book (1963-64) at p.314
- (46) Report of the Superintendent of Insurance of Ontario (1962) at p.174 and (1963) at p.178
- (47) See the Hagey Commission Report, footnote 44 supra
- (48) ± 502,000
- (49) ± 88,000
- (50) ± 66,000

(51)  $\pm 256,000$   
(52)  $\pm 206,000$   
(53)  $\pm 174,000$   
(54)  $\pm 48,800$   
(55)  $\pm 254,000$   
(56) No confidence limits given  
(57)  $\pm 52,400$   
(58)  $\pm 26,700$   
(59)  $\pm 21,900$   
(60)  $\pm 65,000$   
(61) No limits given. The actual estimated loss was \$7,998 and the recovery \$7,577 but in rounding to the nearest 1,000 both appear as 8,000  
(62) No limits given  
(63) No limits given  
(64) No limits given  
(65) Slight rounding errors were ignored here and in several of the following figures  
(66) Slight rounding error ignored  
(67) See infra for combined recovery ratios for both tort and non-tort recovery  
(68)  $\pm 401$   
(69)  $\pm 3.7\%$   
(70)  $\pm 401$   
(71)  $\pm 3.7\%$   
(72) No limits given for the following figures  
(73)  $\pm 411$   
(74)  $\pm 4.3\%$   
(75)  $\pm 562$

(76)  $\pm 5.8\%$   
(77)  $\pm 523$   
(78)  $\pm 5.4\%$   
(79)  $\pm 448$   
(80)  $\pm 4.7\%$   
(81)  $\pm 23$   
(82)  $\pm 1.8\%$   
(83)  $\pm 54$   
(84)  $\pm 4.2\%$   
(85)  $\pm 54$   
(86)  $\pm 4.2\%$   
(87)  $\pm 32$   
(88)  $\pm 2.5\%$   
(89) 22, 49  
(90) 12.5%, 29.5%  
(91) 91, 126  
(92) 53.5%, 72.5%  
(93) 6, 24  
(94) 4.1%, 14.0%  
(95) 10, 30  
(96) 7.0%, 18.5%  
(97) No variances given  
(98) No variances given  
(99) No variances given  
(100) No variances given  
(101) See Tables VI, 2,3,4 supra

A. General

We have now analyzed the economic losses incurred and the recoveries both from tort sources and non-tort sources. We have seen that there were total losses in the universe of \$14,437,000, and total recoveries of \$8,702,000, made up of \$5,355,000 tort recovery and \$3,347,000 non-tort recoveries. (1) Our analysis of the tort recoveries, however, was done in a vacuum. No account was taken of the non-tort recovery secured by the individuals analyzed. Similarly, our analysis of the non-tort recovery secured by the various individuals was done without reference to their tort recovery. A composite picture must now be drawn.

B. Combined Tort Recovery plus Non-Tort Recovery Ratios

The system of compensation for automobile accident victims is a composite one. Both tort and non-tort sources may yield reparation to the injured person. In order to assess properly the present system one must examine the position of the injured person after he has received compensation from all sources.

An explanation of the method of calculation of combined tort plus non-tort recovery ratio will assist in comprehending the analysis. Let us assume that A has had expenses of \$500 as a result of an accident. He claimed and received \$200 from the other person by way of tort recovery. He also received a total of \$200 from his own insurance sources by way of non-tort recovery. His combined tort recovery plus non-tort recovery ratio was \$400. over \$500., or .8. Expressed in percentage form this combined recovery ratio amounts to 80%.

A perusal of the Table VII-1 indicates that of the 10,948 people with losses only 585 (2) or 5.3% (3) received nothing at all from either source, 1984 or 18.1% (4) received between 1 and 49% of their losses,

TABLE VII - 1  
COMBINED TORT RECOVERY PLUS NON-TORT RECOVERY RATIOS

(Number in the Universe and percentage figures in cases where some economic loss incurred and known recoveries secured according to type of injury)

Type of Injury	People with Losses	People with no Recovery from either Tort or Non-Tort Sources		People with 1-49% combined recovery		People with 50-99% combined recovery		People with 100%+ combined recovery		Total with some Recovery from Combined Sources	
		No.	%	No.	%	No.	%	No.	%	No.	%
Minor	9,491	553	5.8	1,567	16.5	2,073	21.9	5,299	55.8	8,939	94.2
Serious	1,283	17	1.3	322	25.1	380	29.6	564	44.0	1,266	98.7
Fatal	174	15	8.8	95	54.3	21	12.3	43	24.6	159	91.2
ALL CASES	10,948	585	5.3	1,984	18.1	2,474	22.6	5,906	54.0	10,364	94.7

\* Rounding errors ignored.

2474 or 22.6% (5) received between 50% and 99% and 5906 or 54% (6) received full compensation or better. Altogether there were 10,364 (7) or 94.7% (8) of all the people injured, who received some recovery from one or other or both sources. Therefore there were still 5043 (9) or 46% of all the people suffering losses who were not fully recompensed, even after the combination of both sources of compensation.

When the figures for the different categories of injury are examined, it is observed that the total recovery position of the people with minor injuries is better than those with serious and fatal injuries.

Of those with minor injuries 553 (10) or 5.8% (11) received nothing, 1567 (12) or 16.5% (13) received between 1-49% of their losses, 2073 (14) or 21.9% (15) received between 50-99% of their losses, and 5299 (16) or 55.8% (17) received full compensation or better.

In the serious cases, the recovery pattern is not as good. There were 17 (18) or 1.3% (19) of them who recovered nothing, 322 (20) or 25.1% (21) who recovered between 1-49%, 380 (22) or 29.6% (23) who recovered between 50-99% and only 564 (24) or 44.0% (25) who were fully compensated. After all sources were taken into account, 1266 persons (26) or 98.7% (27) received something from one or other or both sources. However, there were still 56% of the people suffering losses who were less than fully compensated.

In the fatal cases, there were 15 families (28) or 8.8% (24) who received nothing, 95 (30) or 54.3% (31) who received something between 1-49%, 21 (32) or 12.3% (33) who received between 50-99% (31) who received something between 1-49%, 21 (32) or 12.3% (33) who received between 50-99% and only 43 (34) or 24.6% (35) who received full compensation or better. Although 159 of the fatal injury cases or 91.2% (36) had some recovery<sup>from</sup> either or both sources, there were still 75.4% of the families who received less than full recovery.

Thus, although 54% of those who suffered economic losses were fully compensated after combining both recovery sources, the people who were less badly injured fared better than those who were more seriously injured. It appears that where the losses are largest and where full compensation is therefore most needed, it is least likely to be achieved. On the other hand, in the less severe cases, where full compensation is not as vital, it seems to be most readily available.

It must be recalled that full compensation by tort recovery (37) alone is secured in only 28.6% of the cases. In the minor cases 29.1% got full recovery from tort sources alone, in the serious cases 27.7% got full recovery, and in the fatal cases 15.8% received full recovery in tort. Far fewer people, 17.6% secured full compensation from non-tort sources alone. (38) There were 18.9% of the minor cases, 8.8% of the serious cases and 10.5% of the fatal cases which received full compensation from non-tort sources alone. By combining the recoveries from both of these sources one sees that many people are fully reimbursed for their losses. Nevertheless there are still large numbers who do not have complete compensation. There <sup>is</sup> a higher proportion of these people in the more serious injury cases which considerably aggravates the situation.

The other fact that must be remembered is that there is often a considerable waiting period prior to the receipt of tort recovery. Thus, even where there may be full monetary compensation, the injured person may have waited for a portion of it for a considerable length of time. The other point that cannot be forgotten is that in this study no account was taken of pain and suffering losses and other social costs. Only economic losses were measured. Thus, since the "legal losses" were considerably larger, the compensation ratios of these losses was smaller.

In other words, when one considers losses as a court would consider them, the recovery pattern would be much worse.

#### Net Out-of-Pocket Losses

Perhaps the most meaningful analysis which can be done is to measure the net out-of-pocket losses suffered by an individual after he has secured compensation from all sources. In other words, we should determine the actual losses of each individual by deducting from his "economic loss" the total of both his tort recovery and non-tort recovery. Thus, assuming that A had economic losses of \$500 as a result of his injury, he recovered from the other person \$100 in tort recovery, and \$100 non-tort recovery from his own insurance sources. His net out-of-pocket loss is  $\$500 - (\$100 + \$100) = \$300$ . All of the people who suffered injury were analyzed by the computer, their losses, if any, totalled and their recoveries were deducted therefrom. They were each placed in one of the categories indicated on Table VII - 2. The first group of people categorized as "Full recovery or profit" included the people who had no losses and no recoveries, no losses and some recoveries and those with losses who recovered more than their money losses because of pain and suffering recovery or double coverage. Statistical estimates were made to determine the numbers of people in the universe with the different amounts of out-of-pocket losses. These figures do not correspond exactly with those in Table VII - 1 because of rounding errors because the people with no economic losses were included here and because of a slightly different method of calculation.

An examination of the table reveals that the majority of the people injured suffer no out-of-pocket losses or make some monetary profit as a result of their accident; 6823 people (39) out of 11,870 in



TABLE VII - 2

Net Out-of-Pocket Losses

Type of Injury	Full Recovery or Profit		\$1 - \$499 losses		\$500 - \$999 losses		\$1,000 - \$1,999	
	Number in Universe	%	Number in Universe	%	Number in Universe	%	Number in Universe	%
Minor	6,220	59.7	3,686	35.4	184	1.8	230	2.3
Serious	560	43.6	493	38.4	63	4.9	67	5.2
Fatal	43	24.6	18	10.5	12	7.0	6	3.5
ALL CASES	6,823	57.5	4,197	35.4	259	2.2	303	2.6

Type of Injury	\$2,000 - \$2,999		\$3,000 - \$9,999		\$10,000 +		Total	
	Number in Universe	%	Number in Universe	%	Number in Universe	%	Number in Universe	%
Minor	46	.4	46	.4	0	0	10,413	100
Serious	17	1.3	25	2.0	59	4.6	1,283	100
Fatal	6	3.5	12	7.0	76	43.9	174	100
ALL CASES	69	.6	83	.7	135	1.1	11,870	100

\* Rounding errors ignored

the universe or 57.5% end up with no monetary loss. There were 4197 individuals or 35.4% of the universe that had losses after recovery from all sources of less than \$500. There were 259 individuals or 2.2% who lost between \$500 - \$999, 303 persons or 2.6% who lost between \$1,000 - \$1,999, 69 persons or .6% who lost between \$2,000 - \$2,999, 83 people or .7% who lost between \$3,000 - \$9,000 and 135 individuals or 1.1% who ended up by losing over \$10,000.

These figures indicate that, although most people do not lose a great deal of money as a result of an automobile accident, there are substantial numbers who lose enormous amounts as a result of them. Again we see the spectacle of those with small losses faring quite well whereas those with large losses not doing as well.

In the 10,413 minor cases there were 6,220 (40) individuals or 59.7% (41) who recovered in full or better, and 3,686 individuals (42) or 35.4% (43) who lost less than \$500. Of this latter group 64.6% of them lost less than \$100. (44) There were 184 individuals (45) or 1.8% (46) who lost between \$500 - \$999, 230 people (47) or 2.3% (48) who lost between \$1,000 - \$1,999, 46 persons (49) or .4% (50) who lost between \$2,000 - \$2,999 and 46 people (51) or .4% (52) who lost between \$3,000 - \$9,999.

In the 1,283 serious cases, there were 560 persons (53) or 43.6% (54) who lost nothing at all after recovery from all sources, and 493 persons (55) or 38.4% (56) who had losses between \$1 - \$499. Fifty percent of this latter group had losses of less than \$100. (57) With larger losses there were 63 people (58) or 4.9% (59) who lost between \$500 - \$999, 67 people (60) or 5.2% (61) who lost between \$1,000 - \$1,999, 17 persons (62) or 1.3% (63) who lost between \$2,000 - \$2,999, 25 people (64) or 2% (65) who lost between \$3,000 - \$9,999 and 59 people (66)

or 4.6% who lost more than \$10,000.

Moving to the fatal cases, there were 43 families (68) or 24.6% (69) who had full economic recovery and 18 families (70) or 10.5% (71) who lost between \$1 - \$499. Of this latter group 50% lost under \$100 (72). There were 12 cases (73) or 7% (74) where the losses were between \$500 - \$999, 6 cases (75) or 3.5% (76) with losses of \$1,000 - \$1,999, 6 cases (77) or 3.5% (78) between \$2,000 - \$2,999, 12 cases (79) or 7% (80) between \$3,000 - \$9,999 and 76 cases (81) or 43.9% (82) with losses amounting to over \$10,000.

The economic toll taken by automobile accidents was most severe in the 849 cases or 7.2% of the cases where the net out-of-pocket losses exceeded \$500 (83). It is these "disaster cases" which most require financial aid (84). The group of cases with out-of-pocket losses in excess of \$100 may also give rise to social and economic dislocation. If a proposed plan for reform fails to minimize the hardship in these cases, it may not be worthy of adoption.

Footnotes

- (1) See Chapter II supra and Table II - 1
- (2)  $\pm$  268
- (3)  $\pm$  2.5%
- (4) No limits given
- (5) No limits
- (6) No limits given
- (7)  $\pm$  268
- (8)  $\pm$  2.5%
- (9) Slight rounding error.
- (10)  $\pm$  276
- (11)  $\pm$  2.9%
- (12)  $\pm$  426
- (13)  $\pm$  4.5%
- (14)  $\pm$  477
- (15)  $\pm$  5%
- (16)  $\pm$  592
- (17)  $\pm$  5.9
- (18) 7, 36
- (19) 16%, 2.8%
- (20)  $\pm$  47
- (21)  $\pm$  3.7%
- (22)  $\pm$  50
- (23)  $\pm$  3.9
- (24)  $\pm$  54
- (25)  $\pm$  4.2
- (26) No limits given

- (27) .6%, 2.8%
- (28) 8, 27
- (29) 5%, 17%
- (30) 77, 112
- (31) 44.3%, 64%
- (32) 12, 35
- (33) 7.5%, 21%
- (34) 29, 60
- (35) 17.5%, 35.5%
- (36) No limits given
- (37) See Chapter V
- (38) See Chapter VI
- (39) No limits
- (40)  $\pm$  581
- (41)  $\pm$  5.6%
- (42)  $\pm$  586
- (43)  $\pm$  5.5%
- (44) Of this group as well 16.6% lost between \$100 - \$199, 5.1% lost between \$200 - \$299, 8.9% lost between \$300 - \$399, 5.1% lost between \$400 - \$499.
- (45) 65, 438
- (46) .6%, 4.2%
- (47) 68, 373
- (48) .7%, 3.6%
- (49) 2, 221
- (50) .02%, 2.1%
- (51) 2, 221

- (52) .02, 2.1%
- (53)  $\pm$  54
- (54)  $\pm$  4.2%
- (55)  $\pm$  53
- (56)  $\pm$  4.1%
- (57) Of this group 23.3% lost between \$100 - \$199, 8.6% lost between \$200 - \$299, 7.8% lost between \$300 - \$399, and 10.3% lost between \$400 - \$499.
- (58)  $\pm$  23
- (59)  $\pm$  1.8%
- (60)  $\pm$  24
- (61)  $\pm$  1.9%
- (62)  $\pm$  7, 36
- (63) .6%, 2.8%
- (64) 12, 51
- (65) 1%, 4%
- (66)  $\pm$  23
- (67)  $\pm$  1.8%
- (68) 29, 60
- (69) 17.5%, 35.5%
- (70) 10, 30
- (71) 7.0%, 18.5%
- (72) Of these, as well, 16.7% lost between \$100 - \$199, 16.7% lost between \$200 - \$299 and 16.7% lost between \$300 - \$399
- (73) 6, 24
- (74) 4.1%, 14%
- (75) 2, 17

(76) 1.5%, 10.0%

(77) 2, 17

(78) 1.5%, 10.0%

(79) 6, 24

(80) 4.1%, 14.0%

(81) 59, 93

(82) 35%, 53.5%

(83) This figure might be enlarged to include the individuals with loss over \$100 who amount to slightly less than one-half of the 4197 in the \$1 - \$499 group, i.e., about 2,000 persons.

(84) See Morris and Paul, The Financial Impact of Automobile Accidents, 110 U. Pa. L. Rev. 913. This study counted losses over \$800 as hardship cases and found that about 8.9% of the people they interviewed had losses exceeding this amount, see at p.920.

## CHAPTER VIII - ATTITUDES

### A. General

Each of the people who were selected for interview had one thing in common. Each had experienced an injury as a result of an automobile accident and each had been exposed to some aspects of the compensation system. These people could speak from first-hand experience about the reparation system. It was decided to elicit the views of these injured people, or of their relatives, concerning their experiences as a result of their involvement in automobile accidents. If you want to know what war is like, it may help to ask someone who has lived through one. So too with the compensation system. Those who have experienced it may be able to focus attention on its weak points as well as its strong ones. The attitudes of these individuals may offer some insight and may act as a barometer with regard to the compensation system. If they are dissatisfied with it, their own future behaviour will be affected. The behaviour of others and the attitudes of others will also be affected since potential claimants often consult friends who have been involved in automobile accidents for advice. Of course, these findings do not purport to reflect the attitudes of the population as a whole.

### B. Attitudes Toward Fault System

These injured people had either benefited from or had been deprived of compensation as a result of the fault system. They were asked if they favoured the fault system or not. An examination of Table VIII - 1 reveals that a majority did not favour the fault system. An estimated 5,681<sup>(1)</sup> of all the people injured in the County of York in 1961 or 47.9% <sup>(2)</sup> expressed views which did not favour the fault system. Only 5,005 <sup>(3)</sup> people or 42.2% <sup>(4)</sup>

TABLE VIII - 1

ATTITUDES TOWARD FAULT SYSTEM  
(Numbers in universe according to type of injury)

Type of injury	Number in Universe		Favour	Fault	Against	Fault	No Opinion	
			Number	%	Number	%	Number	%
Minor	10,413	100%	4,515	43.4	4,884	46.9	1,014	9.7
Serious	1,283	100%	435	33.9	690	53.8	158	12.3
Fatal	174	100%	55	31.6	107	61.5	12	6.9
All Cases	11,870	100%	5,005	42.2	5,681	47.9	1,184	9.9

did favour the present fault system. The balance of 1,189, or 9.9% expressed no opinions on the fault system.

On closer analysis, the table discloses that attitudes appear to change according to the severity of the injury suffered. Whereas 46.9% (5) of those with minor injuries were against the present fault system, 53.8% (6) of the seriously injured opposed it and 61.5% (7) of the respondents in the fatal injury cases were opposed to the fault system.

Those who favoured the fault system varied correspondingly in accordance with the nature of their injury. Of those with minor injuries 43.4% (8) favoured the present fault system, 33.9% (9) of the seriously injured favoured it and only 31.6% (10) of the respondents in the fatal injury cases favoured it. The balance of the people interviewed expressed no opinion.

One may conclude that the present fault system is opposed more vigorously by those who are most severely injured and thus, by those who have suffered the highest economic losses. The greatest proponents of the tort system are those who have suffered the minor injuries and the resultant smaller economic losses. This indicates that the tort system is least favoured as a method of allocating the costs of their injuries by the individuals who are most likely to be in need of compensation.

1. Reasons Given

All of the respondents were asked why they favoured the fault system or why they did not favour it. The largest number of people (11) interviewed who opposed the fault system merely felt that people who were injured in car accidents "should be looked after" regardless of whether they were at fault or not.

Another large group of people (12) opposed the fault system because of the difficulties of proof which confront a claimant in prosecuting his claim. Of those who favoured the present system, the largest number (13) felt that an innocent person should not be required to pay or that a person guilty of negligence should not be entitled to any compensation. These people were basically taking the historical moral approach of the fault system which holds that only the "innocent" should receive damages and that only those who are proven "guilty" should be made to pay damages. Another sizeable group (14) feared an increase in false claims if the requirement of proof of fault were removed. There were many other scattered opinions expressed; among them were these: (a) the family of the injured person should not be made to suffer merely because of the fault of an injured breadwinner; (b) all expenses should be paid regardless of fault but not pain and suffering; (c) where an injury is serious there should be compensation without fault but not in minor injuries, and many others. A large number in the sample were unable to provide the interviewers with any reasons for their views.

## 2. Comparison

### a. Residence

There was very little difference in the attitudes expressed between the residents of Metropolitan Toronto and the residents of the other parts of the provinces, whereas 37.6% of the Metropolitan Toronto people favoured the fault system, only 35.5% favoured it in the rest of the province. Whereas 50.7% of the Metropolitan Toronto people were opposed to the fault system, 58.1% of the other residents of the province expressed opposition toward it. Expressing no opinion were 11.7% of the Metropolitan Toronto respondents and 6.4% of the others. The trend that does appear seems to indicate that

the people of Metropolitan Toronto favour the fault system a little more than do those outside Metro.

### b. Attitude Toward Fault System According to Amount of Loss

It has been seen that as the severity of the injury increases the antagonism toward the fault system increases. Another way of testing this proposition is to examine the attitudes toward the fault system of the individuals according to the amount of their economic loss. With only two exceptions there were more people in every group who opposed the fault system than favoured it. There appeared to be greater opposition to the fault system in the higher economic loss categories.

In the lower categories of loss the percentages of those who opposed the fault system were only slightly larger than those who favoured it. For example, Table VIII - 2 shows that those who lost less than \$50 were equally divided in their attitude toward the fault system, 46.2% in favour and 46.2% against. Those who lost between \$50 - 99 were opposed 51.7% to 37.9%. Those who lost \$100 - 199 opposed the fault system 53.5% to 32.6%; those who lost \$200 - 299 were the exception, favouring the fault system 44.4% to 41.7%; those who lost \$300 - 499 opposed it 51.8% to 37.5%; those who lost \$500 - 999 opposed it 45.7% to 39.0%.

As the losses mounted over \$1,000 there was a distinct jump in the opposition to the fault system. Thus, in the category \$1,000 - 1,999 losses the opposition was 55.8% to 37.7%; in the category \$2,000 - 4,999 losses the opposition was 72.7% to 13.6%; in the category \$5,000 - 9,999 the opposition was 57.1% to 35.7%; in the category \$10,000 - 49,999 it was 55.6% to 33.3% and above \$50,000 it was 59.1% to 31.8%.

Generally, it can be said that the people who are hit hardest by the economic impact of an automobile accident are most opposed to the present

TABLE VIII - 2

ATTITUDE TOWARD FAULT SYSTEM  
(Number of persons in sample according to  
amount of economic loss)

Amount of Econ. Loss	Favour Fault System		Oppose Fault System		No Opinion	
	No.	%	No.	%	No.	%
0	7	35.0	11	55.0	2	10.0
1 - 49	54	46.2	54	46.2	9	7.7
50 - 99	11	37.9	15	51.7	3	10.3
100 - 199	14	32.6	23	53.5	6	14.0
200 - 299	16	44.4	15	41.7	5	13.9
300 - 499	21	37.5	29	51.8	6	10.7
500 - 999	41	39.0	48	45.7	16	15.2
1,000 - 1,999	29	37.7	43	55.8	5	6.5
2,000 - 4,999	6	13.6	32	72.7	6	13.6
5,000 - 9,999	5	35.7	8	57.1	1	7.1
10,000 - 49,999	9	33.3	15	55.6	3	11.1
50,000 - 100,000	7	31.8	13	59.1	2	9.1

system of allocation of losses which is based on fault. In all categories of loss, however, (except the group who lost between \$200 - 299 which favoured it slightly and the group between \$1 - 49 which was evenly divided) those who opposed the fault system outnumbered those who favoured it.



### C. Attitudes Toward Method of Trial

All of the respondents who were interviewed were asked what they thought was the best method of trial for automobile accident cases. They were asked whether these cases ought to be tried by a judge and jury, a judge alone or in some other way. Of the estimated totals, Table VIII - 3 demonstrates that the largest group of 5,275 or 44.4% favoured trial by jury. A small group of these people, 977 (15) or 8.2% (16) of the total, felt that only the more serious cases ought to be tried by a jury and that the minor ones should be tried by a judge alone. There were 4,298 (17) of these people or 36.2% (18) who desired a jury in all cases. There were 3,595 (19) people in the universe or 30.3% (20) who favoured the trial of these cases by judge alone. Only 716 (21) individuals or 6.0% (22) of the respondents favoured a hearing before a board rather than in a court. The balance of nearly 20% of the respondents expressed either no preference as to the method of trial, or had other assorted suggested forums.

In examining the table it is apparent that there is a decided variation in the views of the respondents toward the method of trial according to the type of injury suffered. As the injury increases in severity, the injured people seem to prefer a jury trial rather than a trial by judge alone. Whereas only 35.4% of the minor injury respondents favoured jury trial in all cases, 41.0% of the seriously injured favoured jury trial and 49.1% of the respondents in the fatal cases favoured a jury trial. On the other hand, as the injury increases in severity, the desire to have a trial by judge alone diminishes. Whereas 30.9% of the minor injury respondents favoured trial by judge alone, 26.7% of the seriously injured did and only 15.8% of the fatal injury respondents favoured trial by a judge alone.

These figures indicate that there is a decided preference for the jury system among the people who are injured, that there is less confidence

in trial by judge alone, and that only a small number are anxious to have these cases heard by a board. Admittedly, these views do not reflect the opinions of the general population, nor of those most competent to decide on the merits of the jury system as compared to alternate methods of dispute resolution. Nevertheless, those who suggest changes in the method of trial should consider the attitudes of the individuals who have been exposed to the present system.

#### 1. Reasons Given

By far the largest number of people (23) who favoured trial by jury did so because they felt that "many minds are better than one". Another group (24) were worried about a single judge being more likely to be biased against them.

Of the people who favoured a trial by judge alone, the reasons most frequently advanced (25) were that a judge was trained, learned, experienced or impartial as compared to members of a jury. Another group (26) feared that the jury might be more easily swayed by emotion than would a judge and thus they tended to prefer trial by judge alone. Several of the people who preferred the judge said that there was more predictability in the outcome of the case. Others felt that the case would be concluded more rapidly if the judge heard the matter alone. Of those who favoured the board, most of them did so because of the greater speed with which claims could be processed and some indicated that it would be a cheaper method of trial. A large number of people gave various other reasons and a great many gave no reason at all.

#### 2. Comparison of Attitudes Towards Method of Trial

##### a. Residence

There were only slight differences in the views toward method of trial expressed in Metropolitan Toronto and outside of Toronto. The jury

TABLE VIII - 3

## ATTITUDES TOWARD METHOD OF TRIAL

(Numbers in universe according to type of injury)

Type of Injury	Universe		Jury		Judge alone		Serious Jury Minor Judge		Board		Others and No opinion	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Minor	10,413	100	3,686	35.4	3,225	30.9	875	8.4	645	6.1	1,982	19.0
Serious	1,283	100	527	41.0	343	26.7	96	7.5	59	4.6	258	20.1
Fatal	174	100	85	49.1	27	15.8	6	3.5	12	7.0	44	25.3
All Cases*	11,870	100	4,298	36.2	3,595	30.3	977	8.2	716	6.0	2,284	19.2

(\*rounding errors ignored)

appears to be more popular in the area outside of Metropolitan Toronto.

A slightly higher percentage of Toronto people, 28%, favoured trial by judge alone as compared with 23.7% outside Toronto. A slightly lower percentage of Toronto people, 39.6%, preferred trial by jury compared to 39.8% outside Toronto. There was a small percentage, 6.6%, in Metropolitan Toronto that felt serious cases ought to be tried by jury and minor ones by a judge alone as compared with 11.8% outside Toronto. The percentages who favoured a board were identical in and out of Toronto, 5.4%, and the percentage of those who expressed other views or no views were almost the same: 20.4% in Toronto and 19.3% outside Toronto.

b. Attitude Toward Method of Trial According to Amount of Economic Loss

Where the amount of economic loss is greater there seems to be a slightly higher preference for jury trial over trial by judge alone. In the smaller loss cases there were two categories in which more people actually preferred trial by judge alone than trial by jury. In these two groups the figures in Table VIII - 4 indicate the following: where the losses were between \$50 - 99, 44.8% of the people preferred a trial by judge alone whereas 34.5% preferred trial by jury in all cases; where the losses were between \$100 - 199, 48.8% preferred the judge trial whereas only 23.3% preferred trial by jury. It should be noted that in the category of loss between \$50 - 99 there were 13.8% of the people who felt that only serious cases should be tried by jury. If these people were added to the group which preferred the jury in all cases the total in this category would amount to 48.3% who favoured jury trial as compared to 44.8% in this class which preferred trial by judge alone.

In all other categories the people who preferred a trial by jury outnumbered those who preferred trial by judge alone. In several categories,

TABLE VIII - 4

ATTITUDE TOWARD METHOD OF TRIAL  
ACCORDING TO AMOUNT OF ECONOMIC LOSS  
(Individuals in Sample)

Amount of Econ. Loss	Jury		Judge alone		Serious-Jury Minor-Judge		Board		Others and no opinion	
	No.	%	No.	%	No.	%	No.	%	No.	%
Zero	9	45.0	5	25.0	4	20.0	-	-	2	10.0
1 - 49	48	41.0	32	27.4	8	6.8	6	5.1	23	19.7
50 - 99	10	34.5	13	44.8	4	13.8	1	3.4	1	3.4
100 - 199	10	23.3	21	48.8	2	4.7	2	4.7	8	18.6
200 - 299	15	41.7	10	27.8	2	5.6	1	2.8	8	22.2
300 - 499	21	37.5	8	14.3	12	21.4	5	8.9	10	17.9
500 - 999	41	39.0	27	25.7	5	4.8	5	4.8	27	25.7
1,000 - 1,999	32	41.6	21	27.3	4	5.2	5	6.5	15	19.5
2,000 - 4,999	20	45.5	13	29.5	3	6.8	1	2.3	7	15.9
5,000 - 9,999	6	42.9	3	21.4	-	-	2	14.3	3	21.4
10,000 - 50,000	9	33.3	5	18.5	-	-	2	7.4	11	40.7
50,000 - 100,000	13	59.1	3	13.6	-	-	2	9.1	4	18.2

especially where there were larger losses, the people who favoured the jury trial often outnumbered by nearly two to one and sometimes by as much as five to one, those who preferred trial by judge alone. For example, where the losses were between \$200 - 299, 41.7% favoured the jury and 27.8% favoured the judge alone; where the losses were \$300 - 499, 37.5% favoured the jury and 14.3% the judge; where the losses were between \$500 - 999, 39% favoured the jury and 25.7% favoured the judge; where the losses were \$1,000 - 1,999, 41.6% favoured the jury and 27.3% the judge; where the losses were \$2,000 - 4,999, 45.5% preferred the jury and 29.5% the judge; where the losses were \$5,000 - 9,999, 42.9% preferred the jury to 21.4% who favoured the judge; where the losses were \$10,000 - 50,000, 33.3% preferred the jury and 18.5% the judge, and where the losses were over \$50,000, 59.1% preferred the jury and only 13.6% the judge. In all cases, except one, there were fewer than 10% who expressed a preference for a board hearing rather than a court hearing. There were a fair number of people who expressed the view that only serious cases should be tried by a jury and that the less serious ones should be tried by a judge alone.

3. Attitude Toward Actual Trial Itself

There were only a very few people interviewed who participated in a trial of their case. Only nine of these expressed any views concerning their trial. Thus, we must not place too much weight on these figures. However, of the nine of them only three felt "good" about their trial, five felt their trial was "unfair" and one expressed the view that his trial was "very unfair". These views contrast markedly with the expression of views concerning the attitude toward method of trial by the injured people. It seems that the far-off fields of jury and judge trials appear green to those who have not grazed in those fields. Those who have grazed in the trial fields appear not to be satisfied with the flavour.

#### D. Attitude Toward Proposed Ontario Plan

In the spring of 1963, the Select Committee on Automobile Insurance recommended a modification of the present system of compensation. The principle features of this plan were described to each respondent and he was asked whether he favoured it or not and why he felt this way. The overwhelming majority expressed views favourable to the institution of the plan. Of all the 11,870 people injured, 9201 (27) or 77.5% (28) expressed views favourable to the plan. Only 1692 (29) or 14.3% (30) opposed the plan as outlined to them. The remaining people expressed no opinion about the plan.

If one examines the attitudes toward the plan according to the nature of the injury as depicted in Table VIII - 5 one can detect distinct differences. Whereas 76.5% (31) of the minor injury respondents favoured the new plan, 83.7% (32) of the seriously injured favoured it and 89.5% (33) of the respondents in the fatal cases favoured it. The converse of these figures indicate that whereas 15.1% (34) of the minor injury respondents opposed the plan, only 8.8% (35) of the serious injury respondents and only 7.0% (36) of the fatality case respondents opposed it. Thus, as the injury grows in severity, the desire for a partial non-fault compensation scheme increases. Where the need for aid is apparently the greatest, it is most desired. Where the need for assistance is not as great, the proposed scheme is not favoured as overwhelmingly.

##### 1. Reasons Given

Of the reasons given in favour of the proposed plan, the most common one by far (37) was that all the expenses suffered by automobile accident injury victims should be covered. Another large group (38) simply indicated that the proposed plan seemed to be a good idea. Some (39) suggested that the adoption of this scheme would aid the gratuitous passengers to receive some

TABLE VIII - 5

ATTITUDES TOWARD PROPOSED ONTARIO PLAN  
(Numbers in Universe)

Type of Injury	Universe		Favour Plan		Oppose Plan		No Opinion	
	Number	%	Number	%	Number	%	Number	%
Minor	10,413	100	7,971	76.5	1,567	15.1	875	8.4
Serious	1,283	100	1,074	83.7	113	8.8	96	7.5
Fatal	174	100	156	89.5	12	7.0	6	3.4
All Cases	11,870	100	9,201	77.5	1,692	14.3	977	8.2

compensation. A large group of the people (40) who favoured the adoption of the plan registered a caveat. They might change their minds and refuse to support the plan if the rates for this new insurance were too high. Of those who opposed the plan the largest group (41) based their objection on the increased cost of insurance that would necessarily result. Another group (42) felt that people would be more careless in their driving if they were compensated regardless of fault. Several expressed the moral view that the "guilty" should not be paid and that the "innocent" should not be required to pay (43). A few (44) worried about these payments being used to finance litigation which would not otherwise be commenced and a couple objected because of the compulsory feature of the plan. Again, a substantial number of people gave other assorted reasons or failed to give any reason at all.

## 2. Comparison of Attitudes Toward Proposed Ontario Plan

### a. Residence

The people outside of Metropolitan Toronto favour the proposed Ontario plan even more overwhelmingly than do the residents of Toronto. 86% of those outside of Toronto who were interviewed, favoured the proposed plan, whereas 80.7% of the Toronto respondents favoured it. (45) In Toronto 11.1% were opposed to the plan but only 10.8% outside of Toronto opposed it. The balance of 8% in Toronto and 3.2% outside Toronto expressed no opinion. Of the respondents who were outside Metropolitan Toronto the people interviewed who lived outside of the County of York were even more in favour of the proposed plan. 92.3% of the people who resided in urban centres in Ontario, but outside the County of York, favoured the new plan. All of the people interviewed who lived in rural Ontario outside the County of York expressed views favourable to the plan (46). Thus, the proposed scheme was very heavily favoured in Toronto, even more heavily favoured in that part of the County of York

outside of Toronto and most heavily favoured outside the County of York.

### b. Attitude Toward Proposed Ontario Plan According to Amount of Economic Loss

There appeared to be a slightly higher incidence of favourable opinion toward the proposed plan in the higher categories of loss. In the categories of loss exceeding \$200 there were more than 80% of the respondents in favour of the proposed plan. Of course, even in the smaller loss cases the percentage of people favouring the plan exceeded 75% and in one category it reached 93.1% (\$50 - 99 losses). These figures seem to fortify the view that those people suffering higher economic loss tend to favour the plan even more overwhelmingly than those with the smaller losses. Table VIII - 6 should be consulted for the detailed findings of those who favoured the proposed plan, those who opposed it and those who expressed no opinion in the various categories of loss.

TABLE VIII - 6

ATTITUDE TOWARD PROPOSED ONTARIO PLAN  
(ACCORDING TO AMOUNT OF ECONOMIC LOSS)  
(Number in sample)

Amount of Econ. Loss	Favour Plan		Oppose Plan		No Opinion	
	Number	%	Number	%	Number	%
0	16	80.0	3	15.0	1	5.0
1 - 49	91	77.8	16	13.7	10	8.5
50 - 99	27	93.1	2	6.9	-	-
100 - 199	33	76.7	4	9.3	6	14.0
200 - 299	29	80.6	3	8.3	4	11.1
300 - 499	48	85.7	5	8.9	3	5.4
500 - 999	86	81.9	10	9.5	8	7.6
1,000 - 1,999	62	80.5	12	15.6	3	3.9
2,000 - 4,999	36	81.8	6	13.6	2	4.5
5,000 - 9,999	13	92.9	1	7.1	-	-
10,000 - 50,000	22	81.5	2	7.4	3	11.1
50,000 - 100,000	18	81.8	1	4.5	3	13.6

E. Attitude Toward Compensation for Pain and Suffering

The people interviewed were overwhelmingly in favour of compensation for pain and suffering. Table VIII - 7 depicts the number of individuals in the sample who favoured payment for pain and suffering in all cases, the number who favoured it only in serious cases, those who opposed it and those with no opinion. The percentage figures indicate the number who held these views in each category of injury.

Of those with minor injuries, 68.6% of the sample favoured payment for pain and suffering generally, 8% favoured it only in serious injury cases, and 15.9% felt there should be no payment for pain and suffering.

Turning to the seriously injured, a slightly higher percentage, 69.0% favoured compensation for pain and suffering in all cases, 9.5% preferred it only in serious cases and only 13.4% felt that there should be no compensation at all for pain and suffering.

In the fatal cases, the respondents were most in favour of payment for pain and suffering; 70.2% were in favour of compensation, 22.8% felt that no compensation should be allowed for pain and suffering.

In conclusion, among the people who have experienced injury as a result of an automobile accident, there is an enormous number who feel that there should be compensation for pain and suffering. There is a slightly higher number in the more serious cases who feel this way than there is in the less serious cases. Although these figures do not reflect the attitude of the population as a whole, they do represent the views of those who have had first-hand experience with the way our reparation system treats those injured in automobile accidents.

1. Reasons Given

The reason most frequently advanced (47) in favour of payment for pain and suffering was that an injury is an unpleasant experience. Another reason frequently encountered (48) was

TABLE VIII - 7

ATTITUDES TOWARD COMPENSATION FOR PAIN AND SUFFERING  
(number of persons in sample according to type of injury)

	Number in sample		Payment in all cases		Payment only in serious cases		No payment for pain & suffering		Others and no opinion	
	No.	%	No.	%	No.	%	No.	%	No.	%
Minor	226	100	155	68.6	18	8.0	36	15.9	17	7.5
Serious	307	100	212	69.0	29	9.5	41	13.4	25	8.1
Fatal	57	100	40	70.2	0	0	13	22.8	4	7.0

the fear of future recurrence of the injury and the fear of further expenses in the future. These people seem to have focussed on the uncertainty of what the future may bring to them as a result of their injury. A related reason that was given is the feeling that there may never be full recovery from an injury and that this prospect is one for which there should be some compensation (49).

The reasons most often expressed against compensation for pain and suffering included the fear of fake claims (50), the difficulty of measuring of pain and of properly assessing damages (51). Some stoic souls felt that life is replete with pain and that people should just learn to bear it (52). A few feared that insurance rates might be increased by payment for pain and suffering. There were a great many respondents who offered other assorted reasons and still more who gave no reason at all.

## 2. Comparison of Attitude Toward Pain and Suffering

### a. Residence

The residents of Metropolitan Toronto appear to be slightly more in favour of compensation for pain and suffering than the other people interviewed. Of the Metropolitan Toronto residents who were interviewed, 70.4% felt that there should be compensation for pain and suffering, whereas only 61.3% of the other people interviewed favoured this. Only 14.5% of the Metropolitan Toronto residents felt there should be compensation only for expenses, whereas 19.4% of the others expressed such a view. There were several people who expressed other views and a small number expressed no opinions.

b. Attitudes toward Compensation for Pain and Suffering According to Amount of Economic Loss.

Although the respondents were very much in favour of compensation for their pain and suffering, those who had large economic losses were even more in favour of this. In all categories there were substantially more people favouring compensation for pain and suffering in all cases, than there were people who felt that only expenses ought to be re-imbursed. See Table VIII - 8.

Of those who lost between \$1 - 49 there were 61.5% who favoured compensation in all cases compared with 24.8% who felt there should be no such payment; in the category of losses between \$50 - 99 there were 62.1% in favour and 24.1% against; in the category \$100 - 199 there were 67.4% for and 11.6% against; in the category \$200 - 299 there were 61.1% for and 16.7% against; in the category \$300 - 499 there were 58.9% for and 12.5% against. There were small groups who favoured compensation for pain and suffering only in the serious injury cases. There were a few who had other suggestions and a few who expressed no opinions.

In the groups of cases where the loss exceeded \$500 the percentage favouring compensation jumped dramatically. In the group who lost between \$500 - 999 there were 75.2% who favoured compensation in all cases and 9.5% who felt only expenses should be paid; in the group which lost between \$1,000 - 1999 there were 74% who favoured compensation and 11.7% against; in the group with losses of \$2,000 - 4,999 there were 75% in favour and 13.6% against; in the group with losses of \$5,000 - 9,999 there were 85.7% in favour and 7.1% against; in the group of \$10,000 - 49,999 there were 88.9% in favour and 7.4% against, and in the group of losses over \$50,000 there were 63.6% for and 22.7% against compensation for pain and suffering in all cases.

Although the people interviewed were decidedly in favour of compensation for pain and suffering, these figures demonstrate that those people with the largest economic losses were even more overwhelmingly in favour of this

TABLE VIII - 8

ATTITUDE TOWARD COMPENSATION FOR PAIN AND SUFFERING  
ACCORDING TO AMOUNT OF ECONOMIC LOSS  
(Number in Sample)

Amount of Econ. Loss	Payment in all cases		Payment only in serious cases		No payment for pain & suffering		Others and no opinion	
	No.	%	No.	%	No.	%	No.	%
0	14	70.0	3	15.0	3	15.0	-	-
1 - 49	72	61.5	7	6.0	29	24.8	9	7.7
50 - 99	18	62.1	3	10.3	7	24.1	1	3.4
100 - 199	29	67.4	5	11.6	5	11.6	4	9.3
200 - 299	22	61.1	4	11.1	6	16.7	4	11.1
300 - 499	33	58.9	9	16.1	7	12.5	7	12.5
500 - 999	79	75.2	6	5.7	10	9.5	10	9.5
1,000 - 1,999	57	74.0	5	6.5	9	11.7	8	7.8
2,000 - 4,999	33	75.0	3	6.8	6	13.6	2	4.5
5,000 - 9,999	12	85.7	1	7.1	1	7.1	-	-
10,000 - 50,000	24	88.9	-	-	2	7.4	1	3.7
50,000 - 100,000	14	63.6	1	4.5	5	22.7	2	9.1



F. Attitudes Toward Amount of Tort Recovery

Each respondent who received something by way of tort recovery was asked how he felt about the amount of tort recovery he received. He was asked whether he felt it was "generous", "fair", "unfair", or "very unfair". A substantial majority of the people who expressed opinions were satisfied with the amount of money received. There were 6.5% who felt the amount was "generous" and 53.3% who said it was fair. There were 25% who felt the amount they received was "unfair" and 15.2% expressed the view that their recovery amount was very unfair (53). Thus, there were 40.2% of the respondents who indicated dissatisfaction with the amount of their tort recovery. It must again be emphasized that these figures reflect only the opinions of people who were injured and who did receive some tort recovery (54).

Those who had the highest economic losses were most displeased with the amount of tort recovery they received. Those with the small economic losses were most pleased with their tort recovery amount. Of the people who lost over \$10,000 the great majority were unhappy with the amount of their tort recovery. In the intermediate categories of loss between \$200 - 9,999 over 40% (except for one group \$500 - 999) were generally dissatisfied with their recovery. In the smaller groups of cases of under \$200 loss the majority seemed to be contented with their tort recovery. Table VIII - 9 gives the percentage of people in each category of loss who felt that their recovery was generous, fair, unfair or very unfair.

TABLE VIII - 9

Attitude Toward Amount of Tort Recovery Received  
According to Amount of Economic Loss  
 (Opinions of those in sample who responded)

Amount of Econ. Loss	Generous %	Fair %	Unfair %	Very Unfair %
Zero	-	66.7	33.3	-
1 - 49	2.8	75.0	11.1	11.1
50 - 99	7.1	78.6	14.3	-
100 - 199	12.5	59.4	21.9	6.3
200 - 299	6.3	50.0	31.3	12.5
300 - 499	3.8	61.5	26.9	7.7
500 - 999	3.3	56.7	23.3	16.7
1,000 - 1,999	15.0	37.5	22.5	25.0
2,000 - 4,999	8.0	44.0	36.0	12.0
5,000 - 9,999	-	16.7	66.7	16.7
10,000 - 49,999	-	16.7	50.0	33.3
50,000 - 100,000	-	16.7	16.7	66.7

G. Attitudes Towards Length of Time Taken to Dispose of Tort Claims

Each respondent who made a claim was asked how he felt about the length of time taken to dispose of his claim. He was asked to describe his feelings in one of the following categories: "very prompt", "prompt", "slow", "very slow". Of those expressing views, 47.4% indicated satisfaction with the speed with which their claim was processed; 52.5% (slight rounding error) of those expressing views were dissatisfied with the speed with which their claim was processed. There were 13.7% of those who answered the question who felt that their claim was processed in a "very prompt" manner, 33.7% who said it was "prompt", 24.4% who felt it was "slow" and 28.1% who said it was "very slow". Thus, the majority of people expressing views about the speed with which the claim was processed expressed dissatisfaction. Whether their opinions are well-founded or not, the fact that such a large number of people feel this way is worthy of consideration.

Therefore, there are large numbers of people dissatisfied with the length of time that was taken to dispose of their tort claims. The intensity of dissatisfaction increased generally as the amount of economic loss increased. The majority of people in each category who lost more than \$5,000 were dissatisfied with the length of time taken. In two of these groups of cases, the majority described the length of time that the claim took to be settled as "very slow". It was primarily in the smaller loss cases that the respondents were relatively satisfied with the length of time taken to settle their claims. Table VIII - 10 depicts the details.

TABLE VIII - 10

Attitude Toward Time Taken to Dispose of Claim  
According to Amount of Economic Loss  
(Percentage of those in sample who responded)

Amount of Econ. Loss	Very Prompt %	Prompt %	Slow %	Very Slow %
1 - 49	24.1	41.4	20.7	13.8
50 - 99	7.7	53.8	23.1	15.4
100 - 199	13.8	58.6	20.7	6.9
200 - 299	15.4	7.7	23.1	53.8
300 - 499	19.2	46.2	19.2	15.4
500 - 999	16.4	27.9	37.7	18.0
1,000 - 1,999	5.0	35.0	17.5	42.5
2,000 - 4,999	7.4	14.8	29.6	48.1
5,000 - 9,999	-	14.3	28.6	57.1
10,000 - 49,999	13.3	26.7	20.0	40.0
50,000 - 100,000	-	14.3	-	85.7

H. Attitude Toward Medical Treatment Compared with Attitude Toward Treatment by Lawyers

The people interviewed were basically satisfied with their treatment by both the medical and the legal professions. They were, however, slightly more happy with their treatment at the hands of the doctors than they were with their treatment at the hands of their lawyers.

Whereas 52.9% of those who had medical treatment and responded to this question classified their medical treatment as "very good", only 38.5% of the people who were involved with lawyers and who responded classified their legal treatment as "very good". There were 36.6% of the respondents who felt their medical treatment could be classified as "good" and 32.3% of the respondents who so classified their legal treatment. See Table VIII - 11.

Shifting to those who were dissatisfied with their medical or legal treatment, there were a total of 9.5% who were dissatisfied with their medical treatment and 22.9% who were unhappy with their legal services. These dissatisfied people were broken up into one group which felt its treatment was "poor" and another which felt it was "very poor". 5.5% thought their medical treatment "poor" and 13.2% thought their legal treatment "poor". 4.0% thought their medical treatment "very poor" and 9.7% felt their legal treatment "very poor".

Thus, although on the whole there was little dissatisfaction expressed with either medical or legal advisers, the legal advisers were not as highly favoured as were the medical advisers. The legal profession ought to consider as well whether 22.9% is not too high a percentage of people to be dissatisfied with their services.

TABLE VIII - 11

ATTITUDES TOWARD MEDICAL TREATMENT COMPARED WITH  
ATTITUDES TOWARD TREATMENT BY LAWYERS

(Percentage of answers given by the people who had treatment)

	Attitude Toward Medical Treatment	Attitude Toward Lawyer Treatment
Very good	52.9%	38.5%
Good	36.6%	32.3%
Poor	5.5%	13.2%
Very poor	4.0%	9.7%
No opinion	1.0%	6.2%

### 1. Reasons Given

The reasons most frequently advanced for dissatisfaction with medical services were that the emergency service was too slow (55), poor advice and service were given (56), interns only were used to treat the respondents (57), and people were discourteous and did not seem to care (58). On the positive side, the largest number who were pleased with their medical service merely said that their doctors "did a good job" (59), acted promptly (60) or were courteous and helpful (61).

The complaints most frequently registered against lawyers were that they were incompetent (62), they took too long to complete cases (63). They were disinterested and discourteous (64). On the other hand, satisfied clients remarked about the competence of their lawyers (65), their courteous attitudes and concern (66) and the promptness of the service (67).

### 2. Comparison of Attitudes by Residence

The attitudes expressed toward lawyers in Metropolitan Toronto appear to be slightly more favourable than outside of the city. There were 42.9% of the Toronto residents who expressed opinions, who felt that their legal treatment was very good, 35% who felt it was good, 11.8% who thought it was poor and 10.3% who thought it was very poor. Of the people interviewed who lived outside Toronto 31.6% categorized their legal treatment as very good, 31.6% said it was good, 26.3% said it was poor and 10.5% said it was very poor. The sample of those outside Toronto who responded was rather small. Any conclusions drawn from these figures should be cautiously made. Perhaps part of the reason for greater satisfaction with lawyers in Metropolitan Toronto is the existence of a highly specialized negligence bar which may have handled a large portion of these cases. Another factor may be that there was a lower incidence of recovery outside of Toronto than there was in the city.

The people outside of Metropolitan Toronto seem to approve of their medical treatment more than the Toronto respondents. Of the Metropolitan Toronto respondents who expressed views regarding their medical treatment, 51.8% felt it was very good, 37.6% felt it was good, 6.1% thought it was poor and 4.5% very poor. Of the people outside of Metropolitan Toronto 62.3% thought their medical treatment was very good, 33.8% good, 2.6% poor and 1.3% very poor. Thus, there appears to be a slightly greater degree of satisfaction with the medical service outside of Toronto than there is in Toronto. On the other hand, the degree of satisfaction with legal treatment is greater in Toronto than it is outside of the City.

I. Attitude Toward Cost of Legal Services

Each respondent, who retained a lawyer, was asked whether he felt the cost of his legal services was "high", "fair" or "quite low". 32.9% of those responding felt that the cost was "high", 49.7% felt the cost was "fair" and 17.4% thought the fees charged were "quite low". There was a substantial group who had no opinion. The question was not applicable to the largest group in that they did not consult a lawyer at all. These figures indicate that almost one-third of the injured people who expressed opinions on the cost of their legal services were of the view that the fees were "high". The largest number, however, felt the fees were fair and another sizeable group felt they were "quite low".

J. Suggested Improvements to the Present System

Each of the respondents was asked whether he had any suggestions that would improve the present system of looking after automobile accident victims.

The most frequently encountered suggestion by far was that insurance should be made compulsory (68). Another surprisingly large group (69) expressed the desire that ambulance service be improved. A sizeable group (70) indicated that they would favour nationalization of the automobile insurance industry. Some people (71) criticized the emergency service provided at hospitals, a few (72) called for more judges to try automobile cases and a few others (73) called for improvements in the Unsatisfied Judgment Fund.

One small group (74) urged the establishment of a legal aid plan to assist the people injured in automobile accidents and another group of the same size (75) urged the creation of a compensation board to look after automobile accident claims. A great many people gave dozens of other suggestions but the largest number gave no suggestions at all. Those who wish to improve the present system might canvass these views of the individuals who have experienced, as injured persons, the various difficulties that may be encountered.

CHAPTER VIII - FOOTNOTES

- (1)  $\pm 576$
- (2)  $\pm 4.9\%$
- (3)  $\pm 573$
- (4)  $\pm 4.8\%$
- (5)  $\pm 5.7\%$
- (6)  $\pm 4.2\%$
- (7) Minimum 52%, maximum 71%
- (8)  $\pm 5.6\%$
- (9)  $\pm 4.0\%$
- (10) Minimum 24%, maximum 42%
- (11) 143 individuals (sample figures only)
- (12) 63 individuals (sample figures only)
- (13) 113 individuals (sample figures only)
- (14) 20 individuals (sample figures only)
- (15)  $\pm 320$
- (16)  $\pm 2.7\%$
- (17)  $\pm 556$
- (18)  $\pm 4.7\%$
- (19)  $\pm 540$
- (20)  $\pm 4.5\%$
- (21)  $\pm 286$
- (22)  $\pm 2.4\%$
- (23) 150 individuals in the sample
- (24) 45 individuals in the sample
- (25) 91 individuals in the sample
- (26) 28 individuals in the sample
- (27)  $\pm 494$
- (28)  $\pm 4.2\%$
- (29)  $\pm 416$
- (30)  $\pm 3.5\%$
- (31)  $\pm 4.9\%$
- (32)  $\pm 3.2\%$
- (33) Minimum 82.5%, maximum 94.4%
- (34)  $\pm 4.1\%$
- (35)  $\pm 2.4\%$
- (36) Minimum 3.5%, maximum 14.5%
- (37) 175 individuals. Only the number of individual responses in the sample studied are given here.
- (38) 76 individuals in the sample.
- (39) 10 individuals in the sample.
- (40) 48 individuals in the sample.
- (41) 28 individuals in the sample.
- (42) 12 individuals in the sample.
- (43) 13 individuals in the sample.
- (44) 6 individuals in the sample.
- (45) These figures are calculated on the basis of the sample only. No weights were given to the minor cases as was done above. This explains why these percentage figures are higher than those calculated for the overall estimates.
- (46) 14 out of 14 respondents.
- (47) 171 individuals in the sample.
- (48) 39 individuals in the sample.
- (49) 22 individuals in the sample.
- (50) 34 individuals in the sample.
- (51) 22 individuals in the sample.

- (52) 17 individuals in the sample.
- (53) There was a large number of others to whom the question was not applicable and a group who expressed no views. Percentages are calculated with relation to the actual response totals and the not applicable and no responses were ignored.
- (54) No breakdown according to type of injury was made.
- (55) 35 individuals in sample
- (56) 29 individuals in sample
- (57) 14 individuals in sample
- (58) 8 individuals in sample
- (59) 142 individuals in sample
- (60) 94 individuals in sample
- (61) 32 individuals in sample
- (62) 19 individuals in sample
- (63) 14 individuals in sample
- (64) 13 individuals in sample
- (65) 65 individuals in sample
- (66) 38 individuals in sample
- (67) 9 individuals in sample
- (68) 103 individuals in sample
- (69) 44 individuals in sample
- (70) 24 individuals in sample
- (71) 18 individuals in sample
- (72) 12 individuals in sample
- (73) 12 individuals in sample
- (74) 10 individuals in sample
- (75) 10 individuals in sample

## IX CONCLUSIONS

(1) Thorough investigation and study should precede the reform of respected institutions so that errors may be avoided. Since alteration of the present system of compensation for victims of automobile accidents in Ontario was being contemplated, this study was designed to collect factual data which would make possible a more informed decision. An attempt was made to discover the economic losses suffered as a result of automobile accidents, the tort and non-tort compensation, the role of lawyers and courts and the attitudes of the victims toward the present system. Although recommendations are not within the frame of reference of this study, certain conclusions may be drawn. Generally, the study does substantiate statistically some of the criticisms levelled at the tort system; others have not been borne out by the facts. The necessity for jettisoning entirely the present system has not been demonstrated by the data, since many victims are fully and promptly covered. Strengthened by certain modifications, the system may be worthy of preservation and even praise.



A. ECONOMIC LOSSES

(2) The aggregate of the economic losses produced by automobile accident injuries is staggering; the total amounted to \$14,437,000 in 1961 for the County of York. Almost 11,000 individuals suffered some economic loss as a result of accidents transpiring in the County of York in that year. The individual losses were typically small, however, since the bulk of those injured suffered only cuts and bruises which did not generate large costs. Nevertheless, 24.8 per cent of those with minor injuries, 58.6 per cent of those seriously injured and virtually all of the fatal cases incurred economic losses in excess of \$500. Although the serious and fatal cases comprised only 12.3 per cent of the population, the treatment of these large loss cases poses the most serious challenge to the present system.

B. TORT RECOVERY

(3) The multiple purposes of tort law are to deter substandard conduct, to punish wrongdoers and to provide compensation. This study reveals that the law of torts has not lived up to this latter goal in that it has failed to supply full economic reparation for all of those injured in automobile accidents. A majority of 57.1 per cent of those injured received nothing at all by way of tort recovery. Any assessment of the tort system must balance the advantages of the other objectives of tort law in the light of this significant fact.

(4) The gratuitous passengers, who could hardly ever be charged with any contributory negligence personally, fared much worse than the pedestrians and the drivers. No tort reparation was obtained by 66.3 per cent of the gratuitous passengers, 61.2 per cent of the drivers and 46.3 per cent of the pedestrians. Aggravating this sorry state of affairs is the fact that guest passengers emerged even worse off in the more serious cases, there being no tort recovery in 68.5 per cent of the serious and in 91.7 per cent of the fatal cases. The gratuitous passenger subsection of the Highway Traffic Act is effectively reducing the incidence of recovery by guest passengers. The impact of the exceptions to this subsection which have been developed is only negligible.

(5) When an injured person receives something by way of tort recovery, this does not guarantee that there will be full economic reimbursement. The tort system alone yielded complete recovery to 28.8 per cent of those suffering economic losses, partial compensation to 16.8 per cent while the balance remained without any tort reparation. In absolute numbers 7,800 individuals of the 10,948 incurring economic losses received either nothing or something

less than full compensation via the tort route alone.

(6) The pattern of tort reparation was often capricious and uneven. Full compensation was less frequent in the more serious cases than it was in the minor ones; conversely, a complete absence of any tort recovery was more likely as the injury increased in severity.

(7) The problem of astronomically high damage awards is a myth; large tort recoveries were extremely rare. Even in the serious injury cases only 21.2 per cent of those securing tort compensation collected over \$5,000 and only 9.8 per cent received over \$10,000. In the fatal cases 9.5 per cent of the families were awarded over \$5,000 and, strangely enough, in none of the fatal cases studied did the tort recovery exceed \$10,000 although the economic losses did exceed \$10,000 in 27 of the 57 fatal cases surveyed. In any event, the present tort system yielded \$5,355,000 in compensation which amounted to 37.2 per cent of all the economic losses incurred in 1961 for the County of York.

C. DELAY

(8) Even where some tort recovery is forthcoming there is often a substantial delay, particularly in the serious injury cases. Although the study shows that 73.5 per cent of the tort payments were made within one year of the accident, most of these were minor injury cases. Where the need for swift reparation was most pressing, there was a tendency for it to lag. In the fatal cases 22.7 per cent of the payments were not made until after one year had elapsed. Delay was most prevalent in the serious injury cases where 46.6 per cent of the tort settlements were paid after a full year had gone by and 12 per cent were still awaiting a trial on September 1, 1964, between two and one-half and three and one-half years after the date of the accident. Although there may be several valid explanations for these figures, any one responsible for the administration of justice must view them with concern since justice delayed is often justice denied.

D. THE ROLE OF COURTS AND LAWYERS

(9) The role of the lawyer and the court in the allocation of accident costs does not loom as large as one might have expected. Most of the injured do not have a trial, nor do they commence legal action, nor do they make a claim nor do they even consult a lawyer about their legal positions.

(10) A majority of 51.5 per cent of the injured abandoned their potential rights without requesting any payment from the other party. Even more disturbing is the revelation that in 88 per cent of the minor injury cases, 80.5 per cent of the serious and 42.5 per cent of the fatality cases no lawyer was consulted prior to making this decision. Several varied reasons were given for this. The respondents often decided by themselves that they were to blame for the accident. Sometimes they abandoned their claims because they did not wish to, or were legally unable to, pursue the relatives or friends in whose vehicles they were guest passengers. They also manifested a disinclination to become involved in the "trouble" or inconvenience of a law suit, a fear of high legal fees and, particularly in the smaller loss cases, the injury was said to be only slight or non-tort sources had already "looked after most of the bills".

(11) A lawyer was consulted in only 37.3 per cent of all the injury cases. The legal consultation frequency did increase, however, with the severity of the injury; in 51.5 per cent of the serious and in 70.2 per cent of the fatal cases the benefit of the advice of counsel was obtained. This disclosure is food for thought because 62.7 per cent of those injured either abandoned their claims or pursued them on their own without any legal assistance whatsoever. Whether these individuals were fairly dealt with by the other person or his insurer and whether they were accurate in their own assessment of legal responsibility remain unanswered questions.

(12) The cases processed by the courts are only the tip of the iceberg visible above the surface of the water since the vast majority of those injured do not utilize the judicial machinery at all. There were only 1,591 actions commenced out of the 11,870 injury cases in the County of York. In other words, the litigation process was called into play in only 13.4 per cent of these cases. It was most frequently invoked in the serious injury cases where 29 per cent started court proceedings as compared to 11.5 per cent in the minor and 12.3 per cent in the fatal cases.

(13) Only a tiny proportion of the actions that were commenced ever reached a trial on the merits; 1.2 per cent of all the injury cases had actually reached trial at the close of the survey period. In absolute numbers 141 cases or 8.9 per cent of the 1,591 actions commenced required a trial of the issues. This latter percentage figure was considerably higher however in the serious and fatal cases than it was in the minor ones. Therefore, where the losses are greater and where a speedy payment is most needed, a trial of the action is more likely to be necessary.

(14) These figures demonstrate that the vast bulk of motor accident claims are concluded by negotiation rather than by litigation. This is so both before and after the institution of legal proceedings. One should not minimize, however, the indirect effect which prediction of the outcome of potential litigation has upon settlement discussions. Nevertheless, reform of court and pre-trial procedures will have only little direct effect on the great majority of automobile accident cases except as a possible stimulus to more rapid and more frequent settlements.

E. NON-TORT RECOVERY

(15) Fortunately, the victims of automobile accidents may obtain some financial assistance from private insurance and government welfare plans in addition to, or in the absence of, any amount received by way of tort recovery. These new non-tort sources of recovery have done much to mollify the rigour of the pure tort system.

(16) A total of \$3,347,000 was collected by the 1961 injury victims in the County of York from these various non-tort regimes comprising 23.2 per cent of the total economic losses suffered. The problem of unrecompensed hospital expenses was all but eliminated by the establishment of the Ontario Hospital Service Commission; this institution, along with other negligible sources, covered 94.5 per cent of the total hospital expenses incurred. Since 1961 coverage under this plan has been expanded so that only a very few people in Ontario will now be without pre-paid hospital care as a result of an automobile accident. The other types of loss, however, were poorly looked after; only 24.9 per cent of the total medical costs, 51.7 per cent of collision losses, 24.9 per cent of income losses and only 7.2 per cent of funeral expenses were reimbursed. Thus, substantial gaps remain in the non-tort coverage programmes and these will persist even if a medicare programme is established.

(17) There were more individuals who received some financial aid from the non-tort sources than did so from the tort system, although in the aggregate more money was paid to the victims by the tort system than by the non-tort programmes. Of the individuals suffering economic losses 86.2 per cent received some economic assistance from a non-tort source. Most of these, however, obtained only partial recovery; 38.5 per cent secured something less than one-

half of their loss and 30 per cent more than one-half but less than all of their loss. Only 17.6 per cent were fully reimbursed by these regimes alone. Unfortunately, fewer of the more serious cases showed full recovery than did the minor ones.

F. COMBINED RECOVERY

(18) The present system of compensating motor accident victims has been transformed into a composite one; recovery may be obtained from the tort system, the non-tort schemes or something may be secured from both of these sources. When the recoveries from both the tort and non-tort systems were combined, 46 per cent of those suffering losses were still not fully recompensed. The incidence of full recovery was less frequent in the more serious cases, there being complete compensation in 55.8 per cent of the minor, 44 per cent of the serious and 24.6 per cent of the fatal cases.

(19) The great majority of the people receiving less than full recovery emerged with out-of-pocket losses of less than \$500. The net out-of-pocket losses exceeded \$500 in 7.2 per cent of all the injury cases. There were, however, 849 individuals who sustained the severe economic blow of losing \$500 or more as a result of an automobile accident injury. In the serious injury cases 18 per cent ended up with out-of-pocket losses in excess of \$500, and in the fatal cases 64.9 per cent of the families were in this position. There were 2.4 per cent of those injured or 287 individuals whose out-of-pocket losses exceeded \$2,000, the general payment ceiling (except for certain lump sum and income payments) of the proposed new Ontario plan.

(20) The present composite system, therefore, appears to operate most effectively in providing full recovery in the smaller loss cases; it is most deficient in its handling of the larger loss cases where full compensation is less likely to be forthcoming. These "disaster cases" must be taken into account by reformers of the present system.

G. ATTITUDES

(21) It is important that the cost of physical rehabilitation and income maintenance be covered by an automobile accident compensation system; it is also necessary that the people who become involved with that system feel that they have been treated fairly. To discover whether those who had been injured were satisfied with their treatment, certain of their attitudes were canvassed.

(22) One of the paradoxical findings of the study is that, although the injured people seem to favour the present method of jury trial, they are not satisfied with the fault principle upon which those trials are based. Of those expressing an opinion 44.4 per cent favoured trial by jury, at least in serious cases, whereas 30.3 per cent preferred trial by judge alone. Those with the more serious injuries favoured trial by jury more and by judge less. At the same time 47.9 per cent of those offering an opinion were opposed to the fault principle while 42.2 per cent supported it. Antagonism toward the fault doctrine was more frequently expressed in the more serious cases. The most common reason given for opposing the fault system was that all the injured "should be looked after" regardless of proof of fault; the major reason advanced for favouring the fault principle was that the "innocent should not be required to pay" and the "guilty do not deserve any compensation".

(23) An overwhelming majority of those offering opinions supported the principle of compensation for pain and suffering; nearly 70 per cent favoured such payment.

(24) Expressing dissatisfaction with the amount of their tort recovery were 40.2 per cent of the respondents while 59.8 per cent appeared contented. Those with the larger economic losses were generally more discontented with the amount of their tort settlement.

(25) Those interviewed evinced substantial displeasure with the length of time taken to dispose of their tort claims; 52.5 per cent were dissatisfied with the delay while 47.5 per cent appeared contented with the time spent in processing their claims. This was so despite the fact that the great majority of claims were wound up within one year after the accident.

(26) There were generally few complaints about the treatment received from doctors and lawyers. The respondents appeared somewhat less satisfied with their legal service than with their medical treatment, however; 22.9 per cent were displeased by their treatment at the hands of their lawyers while only 9.5 per cent expressed dissatisfaction with their medical advisers. There were 32.9 per cent of those responding who felt that the cost of their legal service was high.

(27) Of the people interviewed 77.5 per cent favoured the principle of the proposed Ontario plan whereas only 14.3 per cent opposed it. In the more serious cases it was approved of even more overwhelmingly.

#### H. SUMMARY OF FINDINGS

(28) In conclusion, this study has disclosed several of the ills from which the present system suffers. The tort machinery leaves a significant compensation vacuum which persists even after the supplementary non-tort sources have come into play. There is substantial delay in the processing of a fair number of the tort claims. The recovery pattern is uneven; more ample reparation is supplied in the minor cases than in the serious ones. Brought into bold relief is the sorry plight of the gratuitous passenger. The victims evinced considerable antagonism toward the fault principle and lawyers were consulted in surprisingly few instances.

(29) This report discloses as well a number of healthy signs manifested by the present system. The majority of those who suffer loss secure complete economic reimbursement through the tort system as buttressed by the new welfare schemes. Almost eliminated as a problem is reparation for hospital costs incurred as a result of an automobile accident injury. A substantial majority of the tort claims are processed relatively quickly, and the vast bulk of them are settled without the intervention of legal proceedings. Most of the automobile accident victims indicated a preference for trial by jury and compensation for pain and suffering, two of the cornerstones of the present tort system, and the overwhelming majority of them supported the principle of the proposed new Ontario plan.